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IMPACT OF MEDIA COVERAGE OF RAPE TRIALS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT ON THE EFFECT OF PUBLICITY ON THE VICTIMS IN RAPE CASES, AND THE RIGHT OF THE PRESS TO HAVE ACCESS TO SUCH PROCEEDINGS

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IMPACT OF MEDIA COVERAGE OF RAPE TRIALS

TUESDAY, APRIL 24, 1984

U.S. Senate,
Subcommittee on Criminal Law,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m., in room SD–562, Dirksen Senate Office Building, Hon. Arlen Specter (acting chairman of the subcommittee) presiding.

Present: Senator Thurmond, chairman of the full committee.

Staff present: Mary Louise Westmoreland, Bruce King, and Tracy McGee, Juvenile Justice Subcommittee; Fred Nelson, Criminal Law Subcommittee; and Mike Wootten, Full Committee.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator **Specter**. Good morning, ladies and gentlemen.

We will begin this hearing on the subject of publicity of pending rape trials. I regret the slight delay, but I had to be present at two other hearings this morning, and I acknowledge the presence of the distinguished chairman of the Judiciary Committee, to whom I will defer to in just a moment for his opening statement.

This hearing raises some very important issues in the administration of criminal law, and is the subject of this Criminal Law Subcommittee of the full Committee on the Judiciary.

The trial of rape cases is a very important issue in the administration of criminal justice. It is a subject that I have long been concerned with, dating back to my work as district attorney of the city of Philadelphia, and the initial efforts which I made, going back to 1966, to encourage victims in rape cases to come forward and testify. It is a crime, which in my judgment, is reported a relatively small fraction of the time that the offense occurs, because it is so difficult for victims to make the complaint, and then to pursue the matter in court.

The recent trial with the extensive media coverage has focused attention on what ought to be the parameters of such coverage, and what efforts ought to be made to encourage victims to come forward in these cases as a general matter.

I recollect back in 1966 when victims in rape cases filed complaints in the city of Philadelphia, that they were questioned in police districts by detectives, in large rooms, with many desks, and many people overhearing comments on very intimate and very difficult situations. We changed that by having a special intake unit in the Philadelphia General Hospital at the time, where there were interviews in private, where there was the gathering of evidence, where there were appropriate photographs which would mark bruises or other evidence to support contentions of forcefulness, and there has evolved in the course of the past decade, decade and a half, a greater sensitivity in the dealing of these very important cases.

The focus of public attention on the criminal law process is, in my judgment, ordinarily highly desirable, because it is only with substantial public understanding of the problems of criminal law enforcement will we have the necessary resources to have sufficient prosecutors, courtrooms, prisons, rehabilitation efforts, where possible, in the entire range of resources necessary to deal with the very major problem of crime in this country.

In examining the rape publicity issue today, we will be focusing on the issues as to what effect there is on the victim in a rape case coming forward, what effect there is on the right of the press to have access to such proceedings. In dealing with an area of this sort on first amendment grounds there are very sharp limitations as to what legislation may be constitutionally enacted, but there is an issue of restraint and it is a question which in the judgment of the subcommittee is worthy of very substantial exploration.

We have a very distinguished array of witnesses today, Mr. Ed Godfrey, president of the Radio and Television News Directors Association; accompanied by Mr. Ernie Schultz, the vice president; Ms. Lynn Marks, director of Women Organized Against Rape in Philadelphia; Ms. Jo Beaudry, coordinator of the Victim/Witness Services, Office of the Milwaukee District Attorney; Mr. Ronald A. Pina, prosecutor in the New Bedford trial; Mr. James Ragsdale, editor of the New Bedford Standard-Times; Ms. Ellen Guyker, who herself was a rape victim in 1978, and has some substantial insights to lend to this issue; and Ms. Jennifer Barr, also a rape victim.

I am very pleased at this time to call on my distinguished colleague, the chairman of this Judiciary Committee, Senator Strom Thurmond.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The Chairman. Thank you, Mr. Chairman.

I want to commend you for holding this hearing, Mr. Chairman. I think it is a very important matter.

Today this subcommittee turns its attention to the effects of media publicity on criminal courtroom proceedings. Recent events surrounding the notorious incident at Big Dan's Tavern in New Bedford, MA, exemplify the growing impact of the media on criminal trials. The media coverage of that trial not only had a profound impact on the local community—as demonstrated by the angry crowds in the streets—it also had a dramatic effect on the entire Nation.

Publicity and its effect on criminal trials bring several conflicting interests to mind. The Founding Fathers recognized, in the words of the Supreme Court, that "Justice cannot survive behind walls of silence." However, since the landmark *Sheppard* case in 1966, the courts have concentrated on the adverse effects that an open trial may have upon the defendant and how certain kinds of publicity might prejudice his chances for a fair trial. While the first amendment is not, of course, absolute, the press has generally been given a free hand where there is "no threat or menace to the integrity of the trial."

There is another area of media impact that has not received the same amount of attention. Specifically, what effect does this publicity have on the innocent victim? In a criminal rape trial, like that in New Bedford, what safeguards should be taken to protect a victim from further humiliation and trauma? Often, the fear of additional embarrassment, suffering, and degradation on the part of the victim determines whether a wrongdoer is prosecuted. These feelings may be particularly intense where the trial is broadcast or publicized throughout the country, rather than in the local community alone. Ultimately, we must not let our haste to preserve the rights of the criminal swerve us from our duty to protect the rights of victims as well.

Earlier in this session of Congress I had the privilege of introducing S. 2423, the President's Victims of Crime Assistance Act of 1984. This significant piece of legislation attempts to reestablish the proper balance between protecting the rights of the accused and the rights of the victims of crime. It would provide funds for State victim compensation programs and Federal and State victim assistance. For the first time on the Federal level, it would authorize the forfeiture of profits that a criminal receives from publicizing his crime. S. 2423 is an effort to benefit the victims of crime in society and not those who victimize it.

The subcommittee has an impressive list of witnesses for its examination of the impact of the media on criminal proceedings. These witnesses should offer valuable insight on how the publicity surrounding a criminal trial affects the defendant, the community, the proceeding itself, and the victim. I would like to join with the other members of the subcommittee in welcoming all of you, and I look forward to your testimony.

I have another hearing, that I will have to leave for in a few minutes, but I look forward to reading the testimony of those that I do not hear.

I also have to open the Senate at 11 o'clock.

Mr. Chairman, thank you very much.

Senator SPECTER. Well, thank you, Mr. Chairman. We very much appreciate your being here.

The subcommittee would like to call as their first witness, the Honorable Ronald A. Pina, district attorney, Bristol District, Commonwealth of Massachusetts.

Mr. District Attorney, we have your full statement. It will be made a part of the record.

STATEMENT OF HON. RONALD A. PINA, DISTRICT ATTORNEY, BRISTOL DISTRICT, COMMONWEALTH OF MASSACHUSETTS

Mr. PINA. I am not in a courtroom so I am a little out of my element right now.

Senator SPECTER. You will find that there are some substantial similarities.

Mr. PINA. Hopefully, under the questioning.

Senator SPECTER. Absolutely.

Mr. PINA. Mr. Chairman, as the chairman has indicated, I have provided the committee with a prepared text, and I assume the best thing to do is basically to summarize some of the impact and information that your staff has asked for.

Unfortunately, as you know, I have recently lived through an incredible experience, and the people in New Bedford, MA; and in Massachusetts, and probably throughout the country have shared the same experience, by going through a process by which our judicial system was finally exposed publicly to everyone's living room. As someone once said, people could sit home and watch the war, for the first time, in Vietnam, in their living rooms, through television.

Well, I think the judicial system has also come home to people, who long before should have known about it, but really knew little about it, and to some degree are either impressed by it, or horrified by it, particularly as it relates to the crime of rape.

Mr. Chairman, we have, as I said, back in New Bedford, gone through this long process, gone through this trial. I think one of the scariest things is that on March 26, 1984, this year, I had just finished sentencing the four individuals who were found guilty, and on that same day, in Rhode Island, a 12-year-old boy had watched the trial on television, he came home from school and tuned in to see what the latest details were on the Big Dan's trial, he raped a 10-year-old girl on a pool table, or attempted to, based on what he had seen, and what he had observed on television.

So that as a former district attorney, I know that the Chair understands that we deal with an interesting side of life when we deal as district attorneys, and we also have to watch the first amendment rights, which I respect with the greatest of respect, as I have been trained through law school.

But yet there really seems to be, as we get into this whole subject, a lack of balancing test, if I may say. The first amendment speaks in terms of absolute, at times, if you listen to the press, and you will listen to the press today, and I do not want to argue with them, but yet I found it necessary when the case first came forward, to file a motion with the court, requesting the court to look at the *Chandler* case which had come out of the Supreme Court of the United States, and come out of Florida, which first began with the concept of having televisions in the courtroom.

Massachusetts had this for 2 years, we had a pilot program, I think it has been a successful program, but even under *Chandler,* and under rules of the Massachusetts court system a judge has discretion in two instances to stop the proceedings from being public.

The first being child abuse cases, and the second being cases wherein we are dealing with matters of sexual violence. Specifically rape. In this case, the judge chose not to do it, and the pressure is very strong on the courts not to close the proceedings.

The Supreme Court has been very clear that in all instances where they can keep the courts open they keep the courts open.

The practicalities of it is that the courts do in fact leave even rape cases wide open, as we have seen.

Just to inform the court, more specifically of some of the problems we had, we immediately began to see the awesome amount of press that was coming to cover the trial. The victim understandably feared the whole process, and did not want to go forward. It took a great deal, with our Victim Witness Program, and in talking to the victim to get the kind of confidence that we needed at that stage to proceed.

We did that, but we did it in an attempt to control the process without affecting the first amendment rights of the press, their right to inform the public, their right to have all the information necessary that the public should know, and at the same time we wanted to protect the victim, and what we came up with was a motion which basically said that the press could be in the courtroom, but yet when the victim took the stand they would not photograph her, they would photograph the walls of the room, or the defense counsel, the prosecution, but not the victim. The victim's voice was allowed on the air, and that was it.

Now, what the judge did not anticipate, and what I did not anticipate, is that some national news networks, cable networks specifically, had decided to run the trial live, on a daily basis.

Well, that did not provide, and I did not understand it, nor did the court, provide for any, what we have in radio at times, that delay button, so that in any case whatever came across the screen, whether it was 2 o'clock in the afternoon, when we were talking about whatever sexual material, or violent material that you would not want a child to watch at 2 o'clock in the afternoon, and you probably would not bar him from watching until after—or his parents would have some control over it, in a normal X-rated movie, kids would come home from school and they were watching it live and in color, right over the air.

The victim was questioned, and cross examined, and to some degree, I believe one of the shocking things that the public observed was the—how brutal it can get in terms of cross examination by defense counsel at times, and they are doing their jobs, but that all occurred.

What we tried to do, as I said, is we filed a motion to say the victim would not be photographed, the court allowed that. The further part of the motion was that her name and address would not be used. The court did not allow that.

Anticipating that the press would impose upon itself some ethical standards, standards that a number of newspapers, I know, by agreement, and radio and television networks, by agreement do not print, or publish, or report the name of the victim. They do not give the address. There is no value to the case. That was broken by some of the media outlets, and once that occurred, and once the CNN ran it live and in color, and they ran the name out, then the walls started to fall, the protection to the victim evaporated, and all that was left was that the victim was not physically seen by a camera, or at least the public's eye could not recognize her if she walked down the street today, but yet her name was known, her address was known, and anyone who wanted to go anywhere near her home, or to try to find her, they could go there, and you cannot control the press from knocking on somebody's door.

And they did. They went to the neighborhood, and so that became a problem, not just for the victim, but for the court system, and how do we in the future handle some of these problems.

It got so bad, and I suggest to you that it went beyond the victim, to the point where the jurors themselves came to a situation where they sat there for 3 weeks, isolated from their families, and when they returned home, everybody had an opinion, everybody believed that they had seen the trial, which in fact they had not seen all aspects of the trial, and were not educated in the law. They believed they had seen the trial, maybe the jurors were in fact not only disputed with, but threatened. Witnesses in the trial were threatened, all from various opinions that were developed through watching the case.

But I more specifically would address to you one of the impacts of media attention is not so much television, but something that I think right now, and I found the hard way, going through this trial, and it is addressed here somewhat to the point, but the fact being that the victim became totally vilified through talk shows, through radio talk shows, and I call those, they are part of the media, and there seemed to be, at some point, no restriction whatsoever, and no licensing, or FCC, or whatever they are doing these days, there seemed to be no real fear by these talk shows, that—what they would do.

In essence, they would have the trial online, and at the break in the trial there would be dead air time. Well, dead air time needed to be filled, and the filling of the dead air time was then a calling in by people who would give their opinions about the victim. That she was a prostitute.

In fact, she was not, Mr. Chairman, but yet there is a prevailing view from those talk shows that she was. The attitudes just went on and on about the victim, where she lived, who she was, what people speculated about her, that type of information permeated a community to the point where it got very ugly, it also became a situation where over the airwaves, the elements of the trial were brought in about Portugese immigrants.

That also became very ugly over a year, because of bigotry and hatred, that unfortunately is still very much alive in this this country, and that was allowed to foster itself on the air, allowed to go public, unchecked.

Taking all of that together, to say the least, you have 3,000 people marching in the streets in New Bedford when the trial first began, when court convictions came down, you had 4,000 people marching in the city of New Bedford, and 10,000 in the city of Fall River.

I would suggest that those 10,000 and 4,000 were not marching for rapists, but more were marching as a reaction to the publicity, and the impacts on their community, and the bigotry that was allowed to flow forward, through again radio talk shows very specifically, and some other media outlets, to a lesser degree.

What do we do? I wish I knew. It is, without a doubt, a very killing effect. The impact, and I have talked to my fellow district attorneys in Massachusetts, is that more and more victims are refusing to come forward, unless they want to qualify for a chapter in Profiles in Courage, very few women want to be raped, go through the process, and be raped, and then be raped again in a courtroom.

The fear is very real, the impact of the media on their lives is very real, and I just—I cannot suggest here, and sit here today and even suggest to this august committee that in any way the first amendment should be legislatively changed, in any way, shape, or form.

I have to believe, as this Congress would, that the media would be responsible, that they would impose some more ethical standards on themselves, and that they would engage in asking the question, is it necessary, is it necessary for all of this information, all of this data about the victim's background, her lifestyle, where she lives, must it all be proposed to the public?

And so I think the answer, if there is one, is more committees of Congress, judiciary—I will wrap this up—involving the judiciary, Members of the Congress and the press, into maybe it is benchmark press committees, by which people can come to an agreement, a balancing test, that there is a balancing, that the victim has rights.

Senator SPECTER. Mr. Pina, may I interrupt you just a moment?

Mr. PINA. Sure.

Senator SPECTER. Senator Thurmond has other commitments. We would like to take some questions from the Senator.

Mr. PINA. Surely, Senator, my pleasure.

The CHAIRMAN. Thank you very much.

We are pleased to have you here, Mr. Pina. I appreciate your being here.

I have some questions, if you do not mind answering those for the record, I would appreciate it.

Mr. PINA. If I can, Senator, I would like to do it.

[No answers to written questions sent by Senator Thurmond to Mr. Pina were received for the record.]

The CHAIRMAN. Now, the only question I thought I might ask you now, before I leave, from your experience as a prosecutor, and especially in the *New Bedford* rape case recently, what recommendations would you make that should be enacted into law, and what recommendations would you make that should be observed by the press, if the press would cooperate?

Mr. PINA. First, as to law, Senator, I would suggest that the test used on the *Chandler* case, now that came out of Florida, as I said, there are two areas, two specific types of crimes that are very sensitive, child abuse and rape cases.

I would impose a standard that the burden would be that it would normally be a closed hearing, unless there is an overriding interest to open the hearing. I would reverse the burden of proof, or the requirement.

Right now the Supreme Court has pretty much left it that the burden is that the proceedings must remain open, unless there is some overriding interest that would close it. I would reverse it, because what we are doing is scaring away victims of these two very sensitive crimes.

The CHAIRMAN. Are you saying closing the hearing to the public, or closing the hearing to the press?

Mr. PINA. I am suggesting closing it to the press and the public, if you are going to be getting into those very sensitive areas, factual situations that are embarrassing to people, that would discourage people from coming forward and testifying, because that is the heart of our system.

We cannot get justice without having witnesses in the courtroom, and if our system is discouraging them from coming, if it is driving them away, then something is wrong with our system.

So I suggest to you that that may be the better test, reverse the balancing test. Have a requirement that it be closed due to the sensitivity of the subject matter, unless there is an overriding interest, open to the media.

The CHAIRMAN. Now, you feel that each State has the authority to do that, like with trials in the State. What you are recommending is that the Congress would act in Federal jurisdictions.

Mr. PINA. I think the standard, yes, Senator, would be to act in Federal jurisdictions, set a standard for the entire Nation. It will vary from State to State right now. As I say, Massachusetts has had the system for 2 years.

The CHAIRMAN. In other words, you do not think that the Congress should enact a law here to override the States on that issue. You think the Congress ought to enact a law that would apply to Federal jurisdiction?

Mr. PINA. I believe so. I believe so. I think it would be very persuasive on all the other State jurisdictions, as opposed to coming down strongly, and saying this is what you shall do.

On the other side, if I may add, also, in terms of the future, I feel very strongly about controlling some of the requirements that the FCC put on some of these, particularly radio stations.

I mean, it is to the point where there is no control whatsoever, and either that is done voluntarily with the media, and the Congress and the FCC, but there must be some guiding interest now, there must be some regulation as to—not as to freedom of speech, but slander, slander and abuse, there are limits to what is actually free speech, and what is abuses.

The CHAIRMAN. I would like to ask you this question. Is there anything short of closing the hearing, that you would recommend, such as having screens to prevent viewing the victim while she testifies?

Mr. PINA. The only problem with that, Senator, on the screens, and we explored that in this trial, is that it makes the victim feel that she is somehow unclean, or unholy, or unwhatever. It puts her in a very defensive situation, and it particularly puts a jury, who may be sitting there watching the trial, and now seeing a screen in front of the witness. it puts her—a real stigma on her, and we want to avoid that; we do not want that type of stigma on anyone testifying in the court.

So that one of the other ways is the motion we filed, not a screen, but just do not have a photograph, do not have a still camera take a picture, do not allow the name and address to be printed. That material is frankly, is irrelevant.

The CHAIRMAN. What you are really recommending is that in rape cases, the press be denied the right to be present in the courtroom, and that the judge would have the discretion, if he saw fit, to have a closed hearing entirely, private and public?

Mr. PINA. I did not hear the last part of your sentence, I am sorry, the very last part.

The CHAIRMAN. Give the judge the right to close the hearing entirely. The judge, in his discretion, could close the hearing entirely.

Mr. PINA. Yes, that is what I am suggesting.

The CHAIRMAN. I said, as I construe what you said, you would favor excluding the press from a rape trial, and leave it to the judge, maybe, to determine whether the public should be present?

Mr. PINA. That is correct. I would even suggest—I would leave it to the judge whether the press should be present, but I would put the standard on him.

What I am saying is that the Supreme Court has reversed it, Senator.

The CHAIRMAN. Would you leave it to the judge on both, as to whether the press should be present, and the public should be present?

Mr. PINA. Yes, and I would put on him the standard that the presumption should be that he should protect the victim from that exposure through the trial process. And if he has—if there is an overriding interest, that he should open it up. But I am reversing the standard, is what I am saying. Right now it is open unless proven otherwise. I would give him the authority to close it, unless he wants to open it up, for the protection of the victim in those two types of crimes, is all I am talking about.

The CHAIRMAN. Thank you very much.

Mr. PINA. Thank you, Senator.

Senator Specter, I pretty much reached a conclusion in my recommendations, they are submitted in writing, there are some more points here that can be reviewed later by your staff.

If there are any questions you would have of me, I am ready, willing and able to answer them, if I can.

Senator SPECTER. Mr. Pina, I would pursue some of the questions that have been raised by Senator Thurmond.

Where you talked about reversing the burden of proof, and closing the hearing to the press and to the public, is there not a distinction which the New Bedford trial has raised, and recent cases have raised, between television, the electronic media, and newspapers. For years, forever, courtrooms have been open to the press. The only exception being if there is going to be a closed hearing, for example, on suppression of a confession, where those proceedings are closed under existing law, so that the confession does not get into the public view if it is later suppressed, and the defendant is prejudiced in the trial.

But absent that kind of situation, the tradition has been, in a criminal trial, always to allow it to the print media. Why should there be a change on that?

Mr. PINA. Actually, I do not believe there should be that distinction, Senator, between the electronic media. I think it is unfair to the electronic media.

As you point out, very aptly, the print media has always been there, traditionally, and even now in this trial the print media was allowed to sit there and write, whereas the electronic media was asked to turn away. It should not be distinguished. I think the feeling is that the electronic media is much more powerful in terms of how it conveys the information, other than the print media, although I think there will be people who will differ. I do not think there should be a distinction.

Senator SPECTER. Should not the restrictions, if any, which are imposed, be of the most limited nature necessary to achieve an objective?

Mr. PINA. Absolutely. And actually, your analogy is more apropos, even a motion to suppress, and when you want to keep that material out of the public so that the jury does not get affected with it, prior to being selected, I would use the same idea, that is exactly what I am talking about.

Senator SPECTER. What problems have arisen in the past, if any, by having the print media present?

Mr. PINA. It has—we have not had that problem specifically, The Standard-Times, the editor is here today, he may address that. They have been very honorable about it. Their view is that they did not print the name of the victim, they did not give the address of the victim. They will give you the fact situation without fine detail of the victim. If other elements of the print media did that, then there would be no problem.

Senator SPECTER. Well, that has been the tradition of the print media, but even where there have been instances where the print media has given the names and addresses of the victim, absent some real dramatization, such as you have, the most sensational rape cases do not draw the type of public attention.

The public attention was drawn to your case because of the electronic coverage, because of the TV coverage.

Mr. PINA. I agree.

Senator SPECTER. So your reason for applying the same restriction to the newspapers as to TV is just as equal between the two of them?

Mr. PINA. Yes, just uniformity. I just think that—I have heard continually, from the print media, that is—from the electronic media, that it is not fair that the print media be there, and they are pulled out. They are an extension of one and the same.

Senator SPECTER. They have said that forever, but the print media has been in courtrooms always, and the electronic media have only been admitted recently.

Mr. PINA. The plus to that also, Senator, is your point about the print media, is that the print media also sends pretty much, usually courthouse reporters, people who know something about the system. That is another problem we had with this trial.

The electronic media sends in new people who do not know anything about the system. They are coming in, they are photographing a situation, they do not know the rules of evidence, they do not know what can and cannot be used, what is a voir dire hearing, out of the sight of the jury, which is supposed to be considered, and yet they run that.

And particularly when jurors are not locked up, and they go home, they watch that, and most courts, at least in our State, refuse to lock up juries. This is an unusual situation because of the media coverage. But traditionally jurors will go home at night, because of the expense to the Commonwealth, and so on.

So they are watching the evening news, and they are being exposed to information that frankly, at times they should not be exposed to. The jurors would leave the room while the attorneys would argue at a voir dire hearing. That is on the evening news. I have real problems with that. I think that affects what our judicial system is all about, in hearing the evidence in that courtroom, and making an objective opinion, based on that information.

We are dealing in a crazy area. Maybe the *Big Dan's* case has been the ultimate in terms of extremes here, but I would still go back to the feeling, Senator, that when you come to child abuse cases, and you come to cases like rape cases, and violence and sex, involvement of that type of nature that the press likes to hear about, but there should be strong control there.

A protection for those types of crimes, they are distinguishable from other types of crime, and they need some certain protection, a balancing test, if you will. I am not saying throw the press out every time.

Senator SPECTER. You have testified about closing the hearing to the public, did I understand that correctly?

Mr. PINA. If it comes as we would do in a juvenile court proceeding, as we would do—I am talking about again a child abuse case, or a—yes, a rape case.

Senator SPECTER. Well, closing to the public is a very unusual procedure.

Mr. PINA. Yes, it is, but it is used.

Senator SPECTER. When, under Massachusetts law—I have never seen a case, juvenile proceedings have been closed on the identity of the juveniles, under the patria parents theory, but what kind of adult prosecutions have you seen closed?

Mr. PINA. Child abuse. Child abuse cases, where the child would have—the child would have to be brought into the courtroom, and then be requested to testify as to what happened, dealing with a family member, or dealing with—particularly with a family member, there the court has witness discretion, to clear the courtroom.

Senator SPECTER. They are not closed under Pennsylvania law. I do not know the law of the other 48 jurisdictions, but what is the reason to closing to the public, even a child abuse case?

Mr. PINA. Because our courts have felt that it is in the best interest of the child, to not be exposed to that kind of coverage, and—-

Senator SPECTER. Wait, we are not talking about the press. We are talking about the public.

Mr. PINA. Same thing. The court has the ability, the judge has the ability to clear the courtroom, that is what I am saying. That is basically where it is at. And he does it only when the child is going through the process. After that, he can reopen the courtroom again. The whole trial is not entirely closed. But at a certain sensitive point for information——

Senator SPECTER. What is there about the events of the child's testimony which would, in your judgment, warrant the clearing of the courtroom?

Mr. PINA. The fact that the child would probably not testify, or would go through an embarrassing experience in a public atmosphere, of having to publicly testify about probably his father, and what the father had done to him, in many of these cases, the incest cases, that are really sex—child abuse is becoming more and more sexual abuse of children, and in fact, we have a new reporting statute in Massachusetts, which means that all child abuse cases simply go through the department of public services—I mean welfare service, and get reported to district attorneys.

So now I am starting to see a file, and it is kind of a scary situation, but it is basically sex abuse.

Senator SPECTER. Moving away from the considerations of the closing of the trial. On the issue of discouraging rape victims from coming forward and testifying, you have already said that you believe this case will discourage rape victims from coming forward and testifying.

Do you have any specific evidentiary basis for that conclusion?

Mr. PINA. It has been too soon to total it, Senator, but I have called the other district attorneys in my jurisdiction, and the impression of all of them is the same.

Senator SPECTER. Have you had a reduction, for example?

Mr. PINA. Yes; I have had. I have had people——

Senator SPECTER. In reports of rape attacks?

Mr. PINA. Yes; I have had people who literally have gone to the police department and said that they were raped, and once the case starts to proceed, they say if anything is going to happen to me, like that case, or I am going to get anywhere near that kind of exposure, or my name is going to be used, I want nothing to do with it. I am going to drop the case.

Senator SPECTER. Do you know how many rapes have been reported in your jurisdiction since this trial started?

Mr. PINA. No, I do not. I would not pretend to give you an exact number, because it is half a million people in the jurisdiction.

Senator SPECTER. I am thinking more specifically about your county.

Mr. PINA. Yes; half a million people.

Senator SPECTER. Half a million people in your county?

Mr. PINA. I take most of the southeastern part of Massachusetts, New Bedford just happened to be a city out of four in the district. I do not have a specific number, but I do have specific phone calls from police departments, who are saying we have some bad rape cases, and they do not want to proceed.

And I called the other district attorneys in the different parts of the State, and they have the same thing, in the Boston jurisdiction, Suffolk County, the same thing.

Senator SPECTER. Mr. Pina, we would be interested in knowing——

Mr. PINA. I can get you those figures.

Senator SPECTER. How many reported rape charges have occurred since, say, the start of this trial, contrasted with a similar period of time for the preceding year or two. I think that would be very helpful.

Mr. PINA. I would be happy to submit those. I would like them myself.

Senator SPECTER. You made a reference to the publicity on the 12-year-old who was charged with the rape of a 10-year-old on a pool table, and you think that that was inspired by the television coverage in this case?

Mr. PINA. I can only rely on the child's mother, and that is what she said. The child's mother said that the boy used to come home every day after school and watch the Big Dan's trial, and would, from there, told her that is where he learned what to do in terms of putting this little girl, this 10-year-old, on the pool table. And that was a scary situation. I think it was. That is where this information comes from.

Senator SPECTER. You testified about another important subject, and that is the availability of this coverage for children in the mid-afternoon.

Were there events which were covered in the courtroom, which in your legal judgment, would constitute obscenity as defined by the juvenile standards, which is a different standard from what adults may see and read or hear?

Mr. PINA. Yes.

Senator SPECTER. It was very explicit.

Mr. PINA. The two defendants particularly got on the stand and explicitly described their activities, with the defendant, I mean with the victim, and what they went through, and their argument was that it was consent, that all of these other items occurred, A, B, C, D, and E, oral sex, natural sex, whatever, if you want to call it natural sex, whatever else occurred, explicity, step by step, and what was done, and where, by the bar, by the pool table, and explaining it in very basic street language, and it kept going.

There were two separate defendants, and there were other people who testified to that, other witnesses in the bar, and these kids were there, listening in the middle of the afternoon. The trial would be on from 10:30 in the morning until 12:30. The second trial would go from 1:30 to 5 o'clock, and there would be reruns at night by CNN.

Senator SPECTER. And you think a showing of that, which is available to all children, would constitute a violation of the obscenity laws.

Mr. PINA. I believe so. I really do. Again, it is a matter of control.

The only point I make of that, Senator, is that there should be some regulation, some control of what goes over the air. At least some time delay, and clean it up, bleep it. You know, if you could have the trial without all the specific words.

I remember the old bleeps on television. I do not know if they bleep any more.

Senator SPECTER. Do you think that there are any good qualities which have arisen from the focus of public attention on this case?

Mr. PINA. Yes. I think the fact that rape, in fact, as a crime, has gotten the amount of publicity it has gotten has, I think, increased the awareness of people, not only in my State, but I think around the country, because I have received a massive amount of letters as to the fact that it is a violent crime, it is not a sexual act that people used to understand it to be in the past, or feel that it was, that it is a crime of violence, and that it is a particular crime of violence, and that it has to be treated with some kind of vigorous pursuit of this crime, and not just let go.

I am hoping that the impact is going to, Senator, on the good side, that more people will in fact report.

Senator SPECTER. Do you think that there is a chance that more women will report rapes?

Mr. PINA. I think we are in the middle of a storm right now, at least I have been in the middle of a storm, that people are reacting to what they have seen, and said, well, I do not know if I would go through that. And that is what I am seeing right now. I would not go through that, I would not go through this whole thing.

But I think the same side of the coin is that there are people who are feeling, as things calm down, that it is a violent crime, it is a terrible crime, and in fact, if you do not go through it, if somebody does not go through that, then you are not going to put these people—get them off the streets and I think what is happening, little by little, is that some new courage is coming forward to testify.

As long as we provide some protections for them——

Senator SPECTER. Beyond the victim, do you think it will have an effect on tougher sentences being imposed by the judges?

Mr. PINA. Yes, I would like to believe that. I think what we did in sentencing in this case, was we tried to take a uniform standard, not just guidelines, but took a uniform standard, across the Commonwealth of Massachusetts, and again certainty of punishment being, from what I have always read, the better deterrent, the high numbers and the low numbers, but the fact that if you do this act you will get this penalty, is what we have been trying to do in Massachusetts, and in fact, in our State, Governor Dukakis has just submitted a new sentencing package, and in it he categorizes a whole series of crimes, and the presumptive sentencing is the way that we are, at least in our State, looking at it, and this crime is well within the sentencing range.

Senator SPECTER. Do you think the consequence of this trial might bring some public pressure for more prison space for rehabilitation, where that is possible, and more space for detention, incarceration of violent criminals? Rehabilitation, if that is possible?

Mr. PINA. I do not know if the public is going to jump that fast, Senator. But I would hope so. But in any case, I would think that the fact of this trial, the fact that they watched it in their living rooms, and the fact that they saw the judicial system going, and what happened, will at least increase their awareness of all these issues, that in fact if you do want these people off the street, criminals off the street, you have got to spend the money in the prison, and you have got to know that they are going to come out someday, they do not stay there forever. So you might as well rehabilitate them while they are there.

It is a whole educational process, but I think this has brought their attention to it. I think one of the important things in this case that I found, and I was somewhat shocked by it, is the actual lack of knowledge that the public has in this country about the judicial process, about the judicial system, and about what goes on in a courtroom, what happens after.

It was an entire learning experience for them, and I would take advantage of that right now. I think now is the time, while they are still interested in the whole judicial system, to get their interest in terms of different things that have to be done these days.

Senator SPECTER. What value is there in that?

Mr. PINA. What value is there?

Senator SPECTER. Pretty substantial value in having people educated about the judicial system in this country, is there not?

Mr. PINA. Absolutely. One of the points we just raised in here, is that now, our schools, you can come out of there learning the languages, and everything else, but you know very little about the actual bases of the country.

The Congress is always studied, the Presidency is always safe—the judicial system has been cloaked in a kind of quiet atmosphere. The cameras were not in there before, the press really was not in there, and now they are just learning what really goes on in the system, and what justice is all about, and how it works, and that is a good experience, because I think it gets people involved, as you say, to some of the tough decisions that States are making around the country, on prison populations, and expenditures and capital outlay funds and budgets, those things have got to be addressed by the public, and they could not just say if there is a way, and now they know what it is about.

Senator SPECTER. Mr. Pina, thank you very much.

Mr. PINA. Senator, it was my pleasure.

Senator SPECTER. I certainly appreciate your being here.

Mr. PINA. Thank you, Senator.

[The prepared statement of Mr. Pina follows:]

PREPARED STATEMENT OF RONALD A. PINA

MR. CHAIRMAN

On March 26, 1984 four defendants, convicted of the so-called Big Dan's gang rape, were sentenced in the Superior Court of Fall River, Massachusetts. Each received a substantial prison term for his role in the highly publicized crime which had occurred about a year earlier on a pool table in a New Bedford tavern. In that crime, a young mother of two was raped repeatedly while onlookers allegedly cheered. The trials of these defendants had been broadcast live and in their entirety over local radio as well as worldwide cable television. Large portions of the trials had been broadcast by commercial television stations both live and on video tape. All major wire services and virtually every major newspaper in the United States of America covered the trials extensively. And then, for the media only, it was over.

On the same day as the sentencing -- March 26,1984 -- something else happened according to a front page story in the Boston Herald. On that day a twelve year old boy reportedly threw a ten year old girl onto a pool table in his home and sexually assaulted her as other children watched.

The Boston Herald quoted the psychologist and television personality Dr. Joyce Brothers. Watching the trial on television, she said, would not make a normal child copy abnormal behavior, "but it will show a disturbed child how to do it." If there is one thing that every single District Attorney and every prosecutor in the United States knows, it is that there is an unfortunate number of disturbed people out there.

Both still and video cameras have had a place in the courtrooms of Massachusetts for approximately two years. It is my belief that this experiment has worked. I believe firmly that our court system should be open to public scrutiny in every way possible, and that only children who have been subjected to traumatic episodes or the victims of sexual violence, should be permitted to offer their testimony behind closed doors. Having said this, however, I believe with equal fervor that we must face the consequences of our open court policies squarely and with candor. It is extremely easy for a television station manager or an assignment editor to take the view that T.V. reporters simply cover a news story in a vacuum and do not affect both the story itself and the populous at large by the nature, the style and the substance of their coverage. It is both easy and wrong.

It is extremely easy for a newspaper editor, harassed by deadlines, by competing breaking stories and by staff shortages to fill a slot covering an important trial with a green, relatively untested reporter who knows nothing of the rules of evidence. It is easy for a radio talk show host to plug dead air between live broadcasts of a trial by answering listeners' questions about the law when he has neither the background nor the expertise to do so competently.

I strongly support the First Amendment to the United States Constitution and the freedom which it brings to all Americans. I would suggest nothing to infringe upon that freedom. But I think that my friends in the news business would agree that a print, radio, or television reporter carries tremendous responsibilities. I think it fair to say that there is no job on the face of the earth which carries greater power but requires fewer traditional credentials. There are no licensing, educational, professional or testing requirements to become a reporter -- other than passing the scrutiny of the man or woman who does the hiring. This is how it should be. I do not propose any changes in that. But I do suggest that there is a need, greater than ever before, for the men and women who control our news gathering media to expand a frank and vigorous dialogue with both the judiciary and the members of the bar.

To date, the debate about cameras in the courtroom has focused primarily on whether or not cameras themselves create a distraction. It it time to redirect the debate to focus on the impact of the news coverage itself. For it is unquestionable in my own mind that the coverage does greatly affect the public. The initial stories of the Big Dan's rape prompted more than 3,000 people to march in the streets of New Bedford to protest crimes of sexual violence. The conviction of the four defendants a year later -- defendants whom the news media repeatedly and unceasingly labeled as Portuguese immigrants -- prompted more than 10,000 people to march to the Fall River courthouse to declare their pride in their ethnic origin. The force of the impact created by news coverage can only be truly believed by those whom it is thrust upon.

Ask the victim of the Big Dan's rape who, with her children, had to flee the city of her birth and who does not believe she can ever return again.

Ask the jurors who performed an extraordinary act of civic duty removed from their families for more than three weeks -- and, when the trials were over were afraid to go home.

Ask the witnesses, the lawyers and their families whose lives were threatened by cowards in the dead of night.

I do not dispute the right of news organizations to use the names of rape victims. But I ask our reporters and editors -- "Is it necessary?" A New Bedford woman who had absolutely no connection to the Big Dan's case, but who had the same name as the victim, was so harassed she couldn't leave her home to go to work.

I do not dispute the right of the press to swarm through a victim's neighborhood, devouring bits of information combed haphazardly from sources good and bad. But is this patchwork of detail regarding the crime victim's habits, past, and life style really necessary? Are the media unconcerned with their devastating impact upon a victim of crime? Is there not some point at which the providing of information stops and the pandering begins?

Is it really necessary that a victim who is willing to testify must qualify for a chapter in "Profiles In Courage"?

Can't the press take upon themselves the judicious exercise of a balancing test of their right to inform, the public's right to know, and the victim's right to some measure of privacy? I believe that a rape victim must face those she accuses and offer evidence to support the charges she brings. But must she be made to flee the mob? Do we not hold a common interest -- both press and prosecutors -- in encouraging victims of sexual violence to step forward to rid our society of rapists? Do we not all have wives, sisters or daughters? Unless the press decides to police itself, we will continue to shut our courts to victims. Rare is the woman who can endure both the trauma of rape and the trauma of a highly publicized trial.

I do not pretend to have a solution to the problems engendered by wall-to-wall coverage of the major trials. But one thing has become clear to me as a result of the Big

Dan's case: the American public is appallingly ignorant of the judicial process that protects our rights and enables us to thrive in a just society. It is not unusual for an American high school student to graduate with an ability to speak passable French or to translate Caesar's commentaries while at the same time knowing absolutely nothing about the legal process which lies at the very core of his civilization.

Many viewers in my own Bristol County and throughout the world who watched or listened to the Big Dan's coverage came to their own conclusions about the guilt or innocence of the defendants. They did so believing that they had watched the trials from beginning to end, heard all the evidence necessary, and reached their own verdicts. This, of course, was simply not true. People, who over a period of three weeks believed that they had watched the entire trial, did so in their living rooms where they were subject to the normal distractions of telephones ringing, visitors calling, children desiring attention and errands to run. More importantly, because the victim's face was never shown she became only a detached accusatory voice, not a human being whose demeanor on the witness stand during two grueling days could be observed. The anguish in the face and the remembered terror in her eyes were never seen. Additionally, most of those who watched or heard the trials did so in a mental context removed from a thorough understanding of the law.

We must eliminate this lack of understanding of the process so fundamental to the future of America. Perhaps we can use the medium itself to accomplish the necessary message. Toward this end I make the following small suggestions without any belief that they even begin to sufficiently address the problem:

-- Local and State Bar Associations should seek to use community access air time on cable stations to educate the public in an appealing fashion about the processes of the law.

-- The Federal Communication Commission should tighten its deteriorating standards. Under current regulations, angry, anonymous voices are apparently permitted to call talk shows and broadcast ethnic slurs and almost any type of character assassination.

-- Live television broadcasts of trials should be subject to a delay button, similar to those used in radio, to provide at least the possibility of editing by news organizations.

-- Commercial television networks should provide some prime time resources for professional productions designed to educate the public to the functions of the court, the importance of the fundamental rights guaranteed by our Constitution and the meaning of the words "innocent until proven guilty."

-- Affluent law firms, together with organizations such as the American Bar Association and the Association of Trial Lawyers of America, should help fund professional television and radio productions designed to inform the public of its rights and responsibilities under the law.

-- This Honorable Congress should appropriate monies for the funding of public television productions to accomplish the same goal.

-- After school programming on commercial and public stations should include some reasonable efforts to educate school children about the rights they now enjoy and the responsibilities they will one day assume.

-- Our own local newspaper in New Bedford, Massachusetts carries a weekly column provided by our local Bar Association which answers questions about the legal process. Such columns should be vigorously encouraged by bar associations everywhere.

-- Perhaps most importantly, every high school in America should offer at least one single semester course that goes beyond traditional civics classes; one that is devoted to instilling at least a general, practical understanding of our courts and how they function. I propose to ask our Governor of Massachusetts to include this goal in his educational policy for the Commonwealth and I sincerely hope that my counterparts across the nation will do the same.

Thank you for the honor and privilege of addressing a committee of the United States Senate. Thank you for listening.

Senator **Specter**. I would now like to call Mr. James Ragsdale, editor, the Standard-Times, New Bedford, MA.

Welcome, Mr. Ragsdale. We very much appreciate your being with us.

We have your full statement, and it will be made a part of the record. To the extent that you can summarize it, it will leave more time for questions and answers.

STATEMENT OF JAMES M. RAGSDALE, EDITOR, THE STANDARD-TIMES, NEW BEDFORD, MA

Mr. **Ragsdale**. I will be glad to do that, Senator.

Thank you very much.

What we do know from the entire *Big Dan's* proceedings is that there were no heroes in this case.

Senator **Specter**. Any heroines?

Mr. **Ragsdale**. There may have been, depending on one's point of view, Senator. But we do know that there were no heroes here.

This is undoubtedly the most publicized rape case in the history of the country. Publicity about this case has brought about many long-range benefits for the public at large.

First is an awareness that all rape cases do not receive this kind of publicity. It is very rare. Also there is a greater awareness, from coast to coast, about the crime of rape, its seriousness, and a signal of this greater awareness is the fact that we are here taking up this subject today.

There are benefits from this heightened awareness. These benefits will go to the future rape victims. Such benefits as rape crisis centers are going to be receiving greater attention, greater support, financial and otherwise, in communities from coast to coast.

Hospitals, police departments, prosecutors now know to sharpen their investigative procedures. Men know better than ever that rape—even the new word, the new term, that came out in the Big Dan's case, joint venture—is very serious and heavy prison terms can result.

Fair trial is the ultimate test, and the ultimate concern for us all who are investigating the subject of publicity with regard to crime.

From very early on in the *Big Dan's* case, we heard loud cries from the cynics of a free press that these six defendants could never get a fair trial anywhere in the Commonwealth of Massachusetts, or anywhere else in the country, for that matter.

Big Dan's shows us these facts: despite all the intensive publicity, not just one, but two fair-minded juries were impaneled, and both of these juries were impaneled with citizens who lived right in the very county where the crime occurred, no change of venue was ever seriously considered by the court.

The Big Dan's experience also demonstrates a reassurance to us all that news outlets across the country do exercise voluntary restraints. To this day, the Standard-Times has never published the name of the victim in the *Big Dan's* case.

Senator **Specter**. Do you think adequate restraint was shown by other media outlets?

Mr. **Ragsdale**. I think that if you measure the media in terms of the national media, yes, sir, I do. There were a few outlets that did not, three newspapers specifically, one radio station and one television station, to my knowledge, that used her name in news reports.

Senator SPECTER. What do you think about Mr. Pina's concern about C-SPAN showing the trial live in the middle of the afternoon, for juveniles to see?

Mr. RAGSDALE. I will get to that in my summary, in just a moment, with regard to opening the courtrooms up to cameras, if you do not mind, Senator.

Senator SPECTER. Proceed as you wish.

Mr. RAGSDALE. All right, thank you.

There are several examples in my full report that I am not going to get into with you right now, in the summary about voluntary self-restraint on the part of the media, both print and electronic.

A couple of quick examples include not using the name of the rape victim, and as a general practice, we do not use them. Most newspapers, the major wire services, the networks, the radio and television networks do not use them.

Senator SPECTER. Pardon me. CNN, not C-SPAN.

Mr. RAGSDALE. Yes, CNN. The Cable News Network.

Another example of voluntary self-restraint is that no photographer that I know of even tried to take this rape victim's photograph, as she entered or left the courtroom, in so-called open territory.

The Big Dan's proceedings, with regard to cameras in the courtroom, give us a lot of hope for the future. There is no better way to build public confidence in the courts than to open them up to this kind of coverage, daytime or otherwise.

I think it is noteworthy that the judge's order to not photograph the victim as she testified, was not challenged—as could have been challenged—by any of the newspapers, the television stations attending.

The only flaw in this was that the rape victim's name was broadcast while it was being used inside the courtroom. This, I think, is a technical matter that could easily be remedied in the future.

Senator SPECTER. How would you do that?

Mr. RAGSDALE. By creating a loop, a 15-second tape loop, and having a representative of the television stations there, to bleep out the name.

Another example of self-restraint was that the rape victim's name, and her address, were given by one of the defense attorneys in the case. The newspapers covering the case, the news outlets for television and radio stations, did not use that information, although it was broadcast live.

Senator SPECTER. How about Mr. Pina's testimony that she was interviewed, or people went to her neighborhood to interview her, or to photograph her?

Mr. RAGSDALE. Her residence was known by us from day one. It did not take the trial for us to discover that. There were attempts, early on, to talk with her, but at least in our case, I know that when she said that she did not want to speak with us, we did not pursue it.

Senator SPECTER. Did others?

Mr. RAGSDALE. As far as the public is concerned though, huge numbers of people arrived at her doorstep after the defense attorney gave her address on live television.

Senator SPECTER. Did other media outlets follow the same restraint that your newspaper did, in not pursuing her, once she said she did not want to be interviewed?

Mr. RAGSDALE. It is my understanding that they did, Senator.

Any person viewing the proceedings of Big Dan's could see how meticulously this judge was operating inside the courtroom. I think that is a very big plus in terms of educating the public about how the judiciary works.

What better way to build confidence in the courts, and about how a fair trial actually operates, than to open up the proceedings to cameras, to live television news coverage, as it were, if the case calls for it?

Judge William Young who conducted the trials in Fall River, was somewhat of a skeptic going into this experience with regard to cameras in the courtroom. He came out of it a converted man. He said that he now fully supports live coverage of trials in process, and this is the man who presided over probably one of the most sensational rape cases in our history.

The Big Dan's experience should reinforce those States which now allow cameras in the courtroom, and it should also encourage those States that do not allow cameras in the courtroom as being a very good experience.

I would suggest that this should extend to a study for the Federal courts, which now do not allow cameras in the courtroom, and to the U.S. Supreme Court itself, to open up their proceedings, to allow more of the public in than just those who can come in for the physical seating capacity of the courtroom.

The *Big Dan's* case also repeats an old experience for us, with regard to what Mr. Pina suggested a little earlier. That experience tells us that prior restraint mandated by legislation, or by the courts, simply does not work. It is not in the long-range interest of the Government, of the public, the country itself, to mandate prior restraint against a free press.

The Standard-Times was gagged during pretrial motions, gagged for 8 days, after a judge who found out that we had interviewed one of the defendants in the jail, issued a restraining order against us, to prevent us from publishing the content of the interview.

Senator SPECTER. You are talking about a gag order?

Mr. RAGSDALE. I am talking about a gag order.

Senator SPECTER. Or an admission, or confession by the defendants?

Mr. RAGSDALE. The judge, at the time he issued the restraining order against us, did not know the content of the interview.

I will tell you, Senator, that the interview contained no such description that could be called a confession or whatever. But the point is, the judge did not know what was in that interview.

Senator SPECTER. Did you take an appeal from his order?

Mr. RAGSDALE. We were in the process of doing that when his order was removed. His order was removed because the defendant, the same one we had interviewed, granted an interview to a broadcast station commentator.

Senator **Specter**. Was there a hearing? There must have been a hearing in court.

Mr. **Ragsdale**. Oh, yes. All of this happened——

Senator **Specter**. At that time, did you have an opportunity to tell the judge there was nothing by way of a confession in the substance of the interview?

Mr. **Ragsdale**. We were never asked that, but we did tell the judge that the interview was conducted over a period of 2 days in the jail with the defendant, and the point I am trying to make here, Senator——

Senator **Specter**. But the judge did not make an inquiry. The issue on a gag order would be whether there is prejudice to the defendant?

Mr. **Ragsdale**. That is right.

Senator **Specter**. But that would arise as a result of his having said something which would not be introduced at trial, suppressible——

Mr. **Ragsdale**. That is right.

Senator **Specter** [continuing]. Enlarged through publication. But that issue was not inquired into by the judge?

Mr. **Ragsdale**. The judge received information along the lines of what we were supposed to have had, by asking the attorney for the defendant to interview the defendant to find out it was he had told the Standard-Times.

The point is, the substance of that interview did finally get broadcast, it did finally get published in newspapers, and a fair trial still resulted.

So, the message is that the press does regularly practice voluntary restraint with regard to pretrial publicity. In the case of the Standard-Times, we voluntarily embraced guidelines that had been advanced by the Massachusetts Bench/Bar/News Committee, which is under the bar association in the State. These guidelines, which we voluntarily embrace, call for us to not publish certain kinds of information. This includes, for example, the names of surviving victims of violent sex crimes.

It also includes not publishing information about confessions, or about prior criminal experience. So what we embrace willingly, we would fight like tigers to resist if efforts to impose these restrictions were made by courts or by the legislative branch.

That is the summary of my report, Senator. I will be glad to get into any questions you may have.

Senator **Specter**. Just a few questions, Mr. Ragsdale.

You say that the critical issue is a fair trial for the defendants, and, of course, that is of paramount concern, but how about the victim? Do you think that the consequences of this publicly viewed trial, especially through the electronic media, was fair for the victim?

Mr. **Ragsdale**. There are times when, as my mother used to tell me, when I was a young boy, Senator, that life is not fair. That this was a sensational case, proved to be of high public interest, from coast to coast, was outside anyone's control, Senator.

The media tried, I think, valiantly, to help her as best it could. It did not impose itself upon her in a harassing kind of way. It did not, during all of the months of pretrial motions, in the courts, use her name. Even though her name was spoken in open court many times, no media outlet ever used her name.

There are all kinds of examples where the media cooperated to try to protect this woman as best it could.

Senator **Specter**. Mr. Ragsdale, I understand your statement that the media does not deliberately try to hurt or harass the victim, but when the question is asked, was the victim fairly treated, what comes through to me from your answer is a qualified no. That the consequence was unfairness to the victim.

Mr. **Ragsdale**. I would rather look at it as a qualified yes, Senator, because there are certain conditions under which the media has no control. Those conditions that it can control I think it controlled very well.

Senator **Specter**. Well, this case is an unusual case. It is the first one like it, and the issue now is whether there could be better procedures established for the future, to have better protection.

It is a matter of gray, as you answered the question, as to whether the victim's rights were violated or not. That is a judgment that different people have to make in their own way.

What do you think about Mr. Pina's recommendation that the burden of proof be shifted to presumptively keep out the media in a case involving rape?

Mr. **Ragsdale**. I would have to resist that, Senator, and resist it mightily, because I think that the major concern that the investigative arm of our Government has, is to create a fair trial. That also is the major concern for the judiciary.

It is also a major concern for the media. A fair trial means a public, open trial. Once we begin to place envelopes around certain cases—to develop certain protections—I think we are running great risks of heading down the road toward Star Chamber proceedings.

Senator **Specter**. Do you think that there ought to be the same limitations on access by the print media which are imposed for the electronic media?

Mr. **Ragsdale**. Which limitations are you referring to, Senator?

Senator **Specter**. Well, should you have the same rules for newspapers as for television?

Mr. **Ragsdale**. Yes, sir.

Senator **Specter**. You think so?

Mr. **Ragsdale**. This is why I think there should be open courtrooms. I believe in more open courtrooms.

Senator **Specter**. You think if the television goes, the newspapers ought to be excluded?

Mr. **Ragsdale**. I do not think anyone ought to be excluded.

Senator **Specter**. But aren't there major distinctions between the consequences of television reporting as opposed to newspaper reporting.

Mr. **Ragsdale**. There might be made by others, but not by me.

Senator **Specter**. You would want to be in the same boat with television. If television is excluded, you would want newspapers excluded, as well?

Mr. **Ragsdale**. No, sir. I am saying that I do not want to be excluded. But I am not about to cut off another avenue of public understanding, such as what television might be able to bring. I would object very strongly to closing court proceedings to any media outlet.

Now, cameras in the courtroom is another issue. There is no constitutional right for cameras to be in the courtrooms. Rather, cameras in the courtroom are a judicial privilege in Massachusetts. To exclude television reporters and their notebooks from courtrooms. I think it would be a major mistake.

Senator SPECTER. I am not suggesting that. The distinction is made on electronic media versus print media, as to whether there would be a basis for excluding television cameras in the courtroom, in circumstances where you would not exclude newspaper reporters in the courtroom.

Mr. RAGSDALE. No new statute is required for that kind of restriction, Senator. In Massachusetts, and I think in most of the States that have allowed cameras in the courtroom, the presence of the camera is there at the discretion of the judge. If the judge feels, as he did in the *Big Dan's* case, that certain portions of the testimony, should be excluded from the lens of the camera, he can do that.

Senator SPECTER. Do you think that there are some circumstances where it would be appropriate to exclude television cameras, where it would not be appropriate to exclude a newspaper reporter and his notebook?

Mr. RAGSDALE. I think the big concern here is the visual part of the television, not the audio part. I think that.

Senator SPECTER. I left out radio deliberately.

Mr. RAGSDALE. I am referring to audio, as well as television. Because one can put the lens cap on the TV camera for a certain portion, and still broadcast the audio portion, which would be just fine.

Senator SPECTER. So there is nothing on the screen, nothing on the TV screen, at that time?

Mr. RAGSDALE. I do not know exactly what they did at the time, Senator. I did not—you heard testimony for periods of time when she was testifying. Personally, I would see no problem in that at all. There is no reason to close down the whole machine simply because you want to protect the identity.

Senator SPECTER. If you do not have a picture, you do not have television at that time.

Mr. RAGSDALE. You have audio, and part of——

Senator SPECTER. What we call radio?

Mr. RAGSDALE. Yes, sir. But here is a new concept for us to think about. And that is what we are trying to do here, is bring the proceedings of a courtroom into the parlors, into the living rooms of people across the country, and that can still be done with audio.

Senator SPECTER. What do you think about the issue of availability for children at 2 o'clock in the afternoon, to have all this sexually explicit testimony broadcast into the homes on television?

Mr. RAGSDALE. I think that this is under parental discretion, that there are some parents who feel their children are ready for it, and some who do not. I think it should remain a household experience.

Senator SPECTER. Parents are really inclined to do that, they do not know what the television coverage is going to bring. Certainly before this trial they had no notice that their—that their 6-year-old daughter would be exposed to this kind of television coverage at 2 o'clock in the afternoon.

Mr. **Ragsdale**. I think parents are equipped to do that, yes, sir. They know in a rape trial, and they know when a woman is about to take the stand, and tell of her experience in a rape trial, they know what is about to come. They do not need me to tell them that. I am confident—I am very confident in the intelligence of the American people—they can decide what they want to hear and see, and they do not need us telling them what they cannot see and hear.

Senator **Specter**. Well, under circumstances where parents are on notice, and able to monitor what their children see, you may be right, but I would suggest to you that there is a vast inability of many parents who are not able of suspecting, or given today where they have any notice of the trial, that these kinds of explicit comments are coming.

Mr. **Ragsdale**. There may be in all of this an overriding positive message that is implanted in even the minds of the young. That is that this is real life stuff, it is very serious, and it is not to be treated lightly, like a Saturday afternoon cartoon.

Senator **Specter**. It is real life stuff, but there are still limits as to who ought to be able to see it, and at what time.

Mr. **Ragsdale**. I am not sure that is under the State's ability to control. I think it belongs in the households. In my judgment, that is where it belongs.

You have to understand, though, what I am suggesting is that I do believe it is in the best interest of the rape victim to not allow her image on television. No one was fighting that.

The only technical flaw here was that no one thought about bleeping the words as they were being spoken, no one thought about a technical system for bleeping her name.

[The prepared statement of Mr. Ragsdale and responses to written questions submitted by Senator Thurmond follow:]

PREPARED STATEMENT OF JAMES M. RAGSDALE

I - Publicity of Criminal Cases--Good or Evil?

The Big Dan's rape case received the national spotlight of media attention as have few criminal cases in the history of this country.

Massive publicity accompanying certain notorious criminal cases must not be viewed as merely a voyeuristic instrusion into the processes of the criminal justice system.

Inherent with publicity come the vital checks and balances of the legal system.

Publicity provides an umbrella of protection against government excesses or, much worse in a criminal case, government non-protection for individuals charged with a crime.

Publicity also engages the powerful forces of the public's perceptions about criminal behavior and molds and alters those perceptions.

Here are but a few obvious benefits that publicity has brought out of the Big Dan's case:

--Never in the history of this country than now has public attent been more sharply focused on the subject of rape because of the Big Dan's rape case.

--Rape crisis centers across the country likely are receiving more support and understanding today because of Big Dan's and the publicity surrounding it.

--Hospitals, police departments and prosecutors from coast to coast are alerted to sharpen their investigatory practices because of Big Dan's.

--Women who may unfortunately be the future rape victims have a greater degree of confidence that prosecutions will take place, and when guilt is established beyond a reasonable doubt, juries will convict.

--Women have a greater understanding about the issues surrounding publicity of rape cases, and most women will know that most rape cases do not receive publicity equal to Big Dan's, if there is publicity at all.

--New dialogue can now begin between people who run rape crisis centers and editors of newspapers and news directors of radio and television stations to review policies about publishing the names of rape victims.

--Big Dan's will not in the long run inhibit women from reporting sexual attacks. Results of this case will fortify them in their deep personal anger and resolve to see that justice is done. There is new confidence that the legal and judicial systems take their charges seriously.

--A heightened awareness now exists among newspaper editors and broadcasters about the subject of rape. Editors and their staffs who have not thought long and hard about how they cover rape cases are now doing so. Professional journalism groups are placing the subject of rape on their agendas for discussion.

--Men must certainly be more aware now in the aftermath of Big Dan's about the seriousness of rape and the consequences of the crime.

--Publicity will never make the crime of rape go away. No more so than does publicity help erradicate mayhem, burglaries or stolen autos. Still, heightened public awareness leads to special precaution, preventive techniques and enforcement that can lead to a reduction of crime.

--For anyone watching the Big Dan's trial on live television, two new words are entered into their vocabularies: "Joint venture." There is a new understanding that encouragement of rape, if not the participation in it, can lead to long jail sentences.

In short, intensive publicity surrounding the Big Dan's case delivers these messages to society:

--Rape, or encouragement of rape, is wrong.

--Despite publicity--and in nearly all cases the names of victims will not be publicized--fair trials can take place.

--Heavy prison terms are on the other side for those convicted of rape.

II-- Fair Trial--The Central Issue

The essential issue in the Big Dan's rape case, as it is in all criminal cases, is for defendants to receive a fair trial.

Staggering to the cynics of a free press are these developments in the Big Dan's case:

--Despite widespread and often intense pre-trial news coverage, not just one but two fair-minded juries were impaneled.

--All members of the two juries came from the immediate county where the victim and the defendants reside--Bristol County.

--Change of venue was never seriously entertained in pre-trial or trial proceedings.

This does not suggest that the media is unaware of the potential damage inherent in pre-trial publicity.

On the contrary.

For many years now most media outlets throughout the country have voluntarily embraced guidelines calling for restraint in publishing certain kinds of incriminating information during pre-trial proceedings.

Covered elsewhere in this report is an accounting of how The Standard-Times exercised voluntary restraint to avoid poisoning the community of potential jurors.

Reactions to heavy publicity in the Big Dan's case were sharp and gloomy from the outset.

From inside and outside the community came doomsday forecasts about how a fair trial anywhere in the Commonwealth of Massachusetts--and anywhere in our country, for that matter--would be impossible for the Big Dan's defendants.

But the Big Dan's trial experience suggests that intensive pre-trial publicity does not automatically make a fair trial impossible.

What we now see from this experience is what most of us in the media have been saying all along:

Intensive news media coverage does not make the judiciary's job impossible. It makes it more difficult, perhaps, but difficulty is the key to our checks and balances system of government.

The Big Dan's experience confirms that fair trial and free press can co-exist in the same country even under the most intensive of publicity spotlights.

By media accounts, Massachusetts Superior Court Judge William G. Young, the defense attorneys and the prosecutor picked through some 500 jury candidates by the time juries for both trials were impaneled.

If there is one word to describe Judge Young in the way these two trials were conducted, it would be "meticulous."

He was judicially meticulous to detail, to fairness, to explanation to a lay jury about what the legal details mean.

At the conclusion of the two trials, Judge Young said he was satisfied that fair trials had taken place.

"This case has been tried as fairly as I can try it," he told a reporter for The Standard-Times on March 21.

Although appeals for the defendants are pending, none is filed on grounds that defendants failed to receive a fair trial.

Credit for the fair trial belongs to the judge, the defense and the prosecution, as well as to the fair-minded people of Bristol County who served on the juries.

Still, the experience commands that we re-examine the canard that publicity--great or small--jeopardizes a fair trial beyond the court's ability to recover.

III - Avoiding Publishing Names of Rape Victims

The experience of the Big Dan's case should give heart to those who fear the exposure of publicity the most--future rape victims.

Most newspapers and broadcast stations have declined to this day to reveal the Big Dan's victim's name.

These include the giants of the industry as well as the small newspapers and broadcast stations.

The notoriety of this case provided a test in the extreme for the policy held by The Standard-Times and most other media outlets to not name victims of violent sex crimes.

The Standard-Times has voluntarily embraced this policy for many years, although its exact lineage is uncertain.

Contrary to published reports in other newspapers--among them, The New York Times--The Standard-Times has never published the name of the Big Dan's rape victim.

Three newspapers in our region did begin to identify the victim, but only after her name was spoken during trial proceedings that were broadcast live.

Even then, The Standard-Times and most media outlets across the country refused to publish her name.

The policy embraced by The Standard-Times is contained among pre-trial publicity guidelines advanced by the Massachusetts Bench-Bar-News Committee, which is under the Massachusetts Bar Association.

This voluntary guideline says we will avoid publishing "names of surviving victims of forceable sex crimes."

Thus, even with the notoriety of the Big Dan's case, nearly all of the newspapers, television and broadcast stations in this country still have not used the victim's name in news accounts of the case.

This, indeed, is a message of self-restraint.

IV - Cameras in the Big Dan's Courtroom

Of all the encouraging media developments in the Big Dan's case, the presence of cameras in the courtroom must be rated right at the top.

In an age when our society's great institutions fall under a cloud of public skepticism, there is no better way to dissipate those clouds than by allowing all the people in.

Surely this trial vindicates the Massachusetts Supreme Judicial Court's goals for allowing cameras inside state courtrooms some five years ago.

The message Big Dan's brings to all courts across the land--including federal courts--is that openness builds confidence.

The physical size of courtrooms need no longer restrict the number of citizens who are allowed to view important court proceedings.

Even the United States Supreme Court--where cameras still are prohibited--should weigh this experience heavily.

Our lives are constantly being adjusted by the actions of courts. More openness encourages more public confidence in those actions.

Gavel-to-gavel television coverage of both Big Dan's trials was carried coast-to-coast via Cable News Network.

No one knows how many thousands of households viewed the proceedings each day. But judging from public reaction, the numbers watching these trials would embarrass producers of daytime TV soaps.

No one who even briefly viewed the proceedings could fail to see the meticulous care taken by Judge William G. Young to assure fair trials for the six defendants.

No one could fail to see the great care taken by defense attorneys and the prosecution for the trials to run properly.

Live and in color was the great devotion to the concept of justice that was being played out for real inside the courtroom in Fall River, Massachusetts.

What better way to instill public confidence in the judicial system?

Some have complained that televising rape trials amounts to "oral pornography."

For these people, there is the option of changing the channel.

Even Judge Young, who entered the trials somewhat of a skeptic about cameras in the courtroom, said he was converted by his experience.

Judge Young told The Standard-Times: "I want you to know that you have a strong advocate for doing this. Anyone who thinks this (referring to media coverage) was a circus, that this was a spectacle, has not been attending jury trials."

Judge Young then told reporters that he now fully supports live television coverage of trials.

Particularly in a case as notorious as Big Dan's, the community shares a vital concern to see that justice is done. What better way to be assured than to enlarge the number of spectators far beyond a courtroom's seating capacity.

It is said that history is our path to civilization.

Our experiences teach us a better way for the future.

A majority of states now allows cameras inside state courts.

The experience by these states teaches us that perhaps it is time for the balance of the states and the federal courts to follow suit.

The single flaw regarding live coverage in the Big Dan's case was that the victim's name was broadcast.

This was a technical detail overlooked by the judge, and is easily remedied in the future.

The solution is to create a 15-second tape "loop" between the live action and the broadcast. A representative of the television or broadcast stations could be present to bleep out those points when the victim's name is mentioned.

A question also is raised about showing the victim's image when she testifies.

In the Big Dan's case, the judge ordered that no photographs be taken of her during times she testified.

The media complied.

And in another demonstration of voluntary restraint, nearly all of the newspaper and television representatives declined to photograph the victim as she entered and left the courthouse.

V - Voluntary Self-Restraint by the Media

"They're only out to sell newspapers," bellowed one defense attorney to the judge during a pre-trial hearing one hot afternoon in August, 1983, referring to The Standard-Times.

And the pre-trial judge, Gerald F. O'Neil, Jr., nodded in agreement.

From the bench and bar came repeated barbs at the news media in the Big Dan's rape case.

This fed a popular belief that the media are a destructive force on the noble pursuit of a fair trial.

Not so.

From the initial reporting through the months of pre-trial courtroom maneuvering, The Standard-Times repeatedly exercised voluntary restraint to avoid publishing certain facts.

These voluntary restraints extended well beyond the policy of not publishing the rape victim's indentity.

Self-restraint extended to statements and written documents presented in open court proceedings during the pre-trial stage.

These include:

--Not reporting certain comments made by defense attorneys and by the prosecutor in open court that could prejudice a jury pool.

--Not reporting on documents obtained by The Standard-Times from court officers by mistake--documents which the judge had intended to be impounded, but were inadvertently distributed.

--Not reporting most of the obscene statements and gestures made by defendants during pre-trial proceedings.

Publication of this information likely would not have made a fair trial impossible. But The Standard-Times was willing to delay publication to allow this information to come out first in the trial.

And most of it did.

Over and again, reports drifted back to our newsroom about how attorneys were telling the pre-trial judge that the newspapers were only seeking to sell more newspapers.

What we knew, in fact, was that we were joining in a kind of unspoken union to attempt to assist the court with its job, while at the same time performing ours.

Self-restraint is nothing new to The Standard-Times or to news media across the country.

As in Massachusetts, the media in most states voluntarily embrace guidelines to avoid prejudicial pre-trial statements.

Avoiding publishing statements of confession and extensive detail of prior criminal records are two examples of these guidelines.

Still, what we impose upon ourselves freely we would resist having imposed upon us by an arm of government.

VI - Involuntary Prior Restraint--Why It Doesn't Work

Constitutional dangers involving prior restraint against the media also were evident in the Big Dan's case when a court gagged The Standard-Times during pre-trial proceedings.

Much to the court's embarrassment, the attempt proved anew that prior restraint is neither a short-term nor long-range solutio in the best interests of the state or the public.

Here, in brief, is a summary of the restraining order that stood for eight days against The Standard-Times:

Some five months after the incident in Big Dan's Tavern, while the court was proceeding with pre-trial motions, one of the defenda invited The Standard-Times to send a reporter to interview him at the jail where he was being held in lieu of bail.

In a letter to The Standard-Times, the defendant, Victor Raposo, said he was fed up with what he was seeing in the press and wanted to tell his side of the story.

After two separate interviews with a Standard-Times representative, Raposo's attorney, Harry Bello, discovered what had taken place. He immediately filed a motion for the court to issue an injunction against the newspaper to prevent publication of the interview.

The Standard-Times waged a vigorous courtroom fight against any gag order by the court, but lost. A temporary restraining order was first issued by Superior Court Judge Gerald F. O'Neil, Jr and a preliminary injunction soon followed.

The restraining order was issued even before editors of The Standard-Times had reviewed the substance of these interviews to determine what, if anything, would be published.

Without having ever seen the substance of the interview, Judge O'Neil ruled that whatever was in the possession of The Standard-Times would, without doubt, destroy Raposo's opportunity for a fair trial.

The court soon was forced to lift the preliminary injunction, however. Several days after the gag order was issued, the same defendant granted an interview to a radio station commentator and the substance of that interview was broadcast.

The futility of the court's actions was demonstrated by the fact that it did not--could not--gag all of the media and did not gag the defendant himself.

Prior restraint, as mandated from the bench, is fraught with difficulties--not the least of which involve prolonged courtroom battles over First Amendment rights.

The folly of this court's action is demonstrated by subjecting the judge's premise to the ultimate test.

The premise was that publication would fatally damage the defendant's right to a fair trial.

The commentator's broadcast version of Raposo's statements were picked up by newspapers and television stations and were widely reported.

Still, a fair trial was achieved in the end.

A postscript: Editors of The Standard-Times decided on their own that the interview would not be published. The decision by editors was not so much on the grounds that this would render a fair trial impossible for Raposo, but rather that the publication would interfere with fundamental journalistic standards held by The Standard-Times.

VII - U.S. Supreme Court Rulings on Publication of Rape Victims' Names

While it was not the committee's stated purpose to review possible legislation to prohibit publication of a rape victim's name, it may serve us well here to review why this likely would be an unconstitutional adventure.

I am indebted to Mr. Richard M. Schmidt, Jr., general counsel for the American Society of Newspaper Editors, for providing background on the substantive rulings by the United States Supreme Court on this point.

The Supreme Court, time and again, has declared unconstitutional those statutes which attempt to prevent publication of information from public records.

The United States Supreme Court, in 1975 in the case of *Cox Broadcasting* v. *Cohn*, 1 *Med. L. Rptr*. 1819, made a clear and unequivocal holding in this regard.

As the court's opinion, delivered by Mr. Justice White, stated:

> In August 1971, appellee's 17-year-old daughter was the victim of a rape and did not survive the incident. Six youths were soon indicted for murder and rape. Although there was substantial press coverage of the crime and of subsequent developments, the identity of the victim was not disclosed, pending trial, perhaps because of GA. Code Ann. §269901 (1972), which makes it a misdemeanor to publish or broadcast the name or identity

> a rape victim. In April 1972, some eight months later, the six defendants appeared in court. Five pleaded guilty to rape or attempted rape, the charge of murder having been dropped.
>
> In the course of the proceedings that day, appellant Wassell, a reporter covering the incident for his employer, learned the name of the victim from an examination of the indictments which were made available for his inspection in the courtroom. That the name of the victim appears in the indictments and that the indictments were public records available for inspection are not disputed. Later that day, Wassell broadcast over the facilities of station WSB-TV, a television station owned by appellant Cox Broadcasting Corp., a news report concerning the court proceedings. The report named the victim of the crime and was repeated the following day.

In a footnote the Superme Court states that three other States have similar statutes, including Florida, South Carolina, and Wisconsin. The Supreme Court stated:

> . . . whether the State may impose sanctions on the accurate publication of the name of a rape victim obtained from public records--more specifically, from judicial records, which are maintained in connection with a public prosecution and which themselves are open to public inspection--we are convinced that the State may not do so.

The court went on to state:

> By placing the information in the public domain on official court records, the State may be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government, in which the citizenry is the final judge of the proper conduct of public business. In preserving that form of government the First and Fourteenth Amendments command nothing less than that the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.

It further stated:

> Once true information is disclosed in public court documents open to

> public inspection, the press cannot be sanctioned for publishing it.
>
> In this instance, as in others, reliance must rest upon the judgment of those who decide what to publish or broadcast. See Miami-Herald Publishing Company v. Tornillo, 418 U.S. 258.
>
> Appellant Wassell based his televised report upon notes taken during the court proceedings and obtained the name of the victim from the indictments handed to him at his request during a recess in the hearing. Appellee has not contended that the name was obtained in an improper fashion or that it was not an official court document open to public inspection. Under these circumstances, the protection of freedom of the press provided by the First and Fourteenth Amendments bars the State of Georgia from making appellants broadcast the basis of civil liability.

It is very true that in a footnote the court stated:

> We mean to imply nothing about any constitutional questions which might arise from a State policy not allowing access by the public and press to various kinds of official records, such as the records of juvenile court proceedings.

The court quoted its previous opinion in Craig v. Harney, which stated:

> A trial is a public event. What transpires in a courtroom is public property. If a transcript of the court proceedings had been published, we suppose none would claim that the judge could punish the publisher for contempt. And we see no difference through the conduct of the attorneys, of the jury, or even of the judge himself, may have reflected on the court. Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it. (Craig v. Harney, 331 U.S. 367, 374 (1947) (emphasis added).)

The court also stated in Cox v. Cohn:

> We are reluctant to embark on a course that would make public records generally available to the media but forbid their publication if offensive to the sensibilities of the supposed reasonable man. Such a rule would make it very difficult for the media to inform citizens about the public business and yet

> stay within the law. The rule would invite timidity and self-censorship and very likely lead to the suppression of many items that would otherwise be published and that should be made available to the public.

In Miami-Herald v. Tornillo, 418 U.S. 241 (1974), the Supreme Court held as unconstitutional a right of reply statute.

As stated by Mr. Chief Justice Berger:

> We see that beginning with Associated Press, supra, the Court has expressed sensitivity as to whether a restriction or requirement constituted the compulsion exerted by government on a newspaper to print that which it would not otherwise print. The clear implication has been that any such a compulsion to publish that which 'reason' tells them should not be published is unconstitutional. A responsible press is an undoubtedly desirable goal, but press responsibility is not mandated by the Constitution, and like many other virtues it cannot be legislated.

The court further stated:

> The choice of material to go into a newspaper, and the decision made as to limitations on the size and content of the paper, and treatment of public issues and public officials--whether fair or unfair--constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

The Supreme Court, in the landmark decision of Near v. Minnesota in 1931, stated that prior restraint on the press has been limited only in exceptional cases. The Court stated:

> The exceptional nature of its limitations places in a strong light the general conception that liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally, although not exclusively, immunity from previous restraints or censorship.

It seems to me that it would be fair to state that it is your considered opinion and that of many that any legislative action that would be attempted to enforce a ban on the publication of the name of an adult rape victim who appears in court and whose testimony is part of the public record in court, would be unconstitutional.

Even in the case of juveniles, the U.S. Supreme Court, in the case of Oklahoma Publishing v. District Court in 1977, stated that the Oklahoma Supreme Court's upholding an order of the District Court of Oklahoma County enjoining members of the news media from publishing, broadcasting, or disseminating in any manner the name or picture of a minor child in connection with a juvenile proceeding involving that child and then pending in the court, was unconstitutional.

The Supreme Court stated that it was unconstitutional under the First and Fourteenth Amendments to permit a State court to prohibit the publication of widely disseminated information obtained in court proceedings which were in fact open to the public. Citing Cox Broadcasting v. Cohn and Nebraska Press Association v. Stuart (1976).

Further, in a matter involving juvenile statutes the Supreme Court held, in Smith v. Daily Mail in 1979, that the West Virginia statute that imposed criminal sanctions for newspapers' truthful publication of alleged juvenile delinquent's name that had been lawfully obtained by the newspaper, since an asserted State interest in protecting anonymity of juvenile offenders is not sufficient to justify application of criminal sanctions for such publication.

The Court further stated in Smith v. Daily Mail:

> Our recent decisions demonstrate that State action to punish the publication of truthful action seldom can satisfy constitutional standards. In Landmark Communications we declared unconstitutional a Virginia statute making it a crime to publish information regarding confidential proceedings before a State Judicial Review Commission that heard complaints about alleged disability and misconduct of State court judges.

The Court cited its previous decisions not only in Landmark but in Cox Broadcasting Corp. v. Cohn and in Oklahoma Publishing Company v. District Court. It said in commenting on the Oklahoma Publishing Company case:

> We held that once truthful information was 'publicly revealed' or in the 'public domain', the court could not constitutionally restrain its examination.

QUESTIONS FOR JAMES M. RAGSDALE SUBMITTED BY SENATOR STROM THURMOND

1. In your prepared statement you point out several benefits from the publicity surrounding the Big Dan's case, among them heightened public awareness and a better understanding of the consequences of rape in general. Yet you dismiss, as almost inconsequential, the tremendous inhibitions and sense of guilt that surround the victim in her decision to prosecute. How can one justify the extent of coverage in this case and the obvious embarrassment and trauma it caused the victim when these same benefits could be achieved by reporting the facts of the case and the eventual sentences of the defendants?

2. You mention throughout your testimony that the Standard-Times voluntarily showed restraint in its presentation of information surrounding the name of the victim as well as other information. This type of responsible journalism should be commended. But I cannot help but notice your continued use of the word "most" as in "most of the media outlets . . . have embraced voluntary guidelines . . .". In fact three papers in your region did begin to identify the victim after her name was broadcast. Do you think this type of incident could be remedied if national voluntary guidelines were published by various media associations with the advice of the judiciary? What sanctions would you suggest be imposed against those who, in their efforts to sell papers or boost ratings, irresponsibly violate these guidelines?

3. In the *Big Dan's* case, apparently the community in which the victim lived knew of her identity. If a complete public record is available for anyone expressing an interest in the case with the motivation to read it, what purpose is served by reporting irrelevant (often incorrect) facts about the victim to the public at large?

4. In your written statement you say "Even the Supreme Court—where cameras are still prohibited—should weigh this (the Big Dan's Trial) experience heavily." Do you advocate in-court coverage of appellate proceedings? And although Supreme Court decisions are certainly newsworthy items, what benefits are to be gained by broadcasting often technical, tedious legal arguments when a full transcript is available and the opinions published?

5. I would like to join with you in your written testimony in commending Judge Young for his expert handling of the case. His meticulous handling of the case and the care taken by both the defense and the prosecution are responsible for minimizing disruptions in the courtroom and the fair outcome. What consideration do you, as a newsman and an editor, give to the possible disruptive effect a news item could have upon the community?

6. You state "No one knows how many thousands of households viewed the proceeding each day, but, judging from the public reaction, the numbers watching these trials would embarrass producers of daytime TV soaps." Judge Jack Day, wrote in his article The Case Against Cameras in the Courtroom, "The media like to talk about the right to know and the educational process, but their interest is mainly, and understandably, in good theatre . . . While a trial may be dramatic, anything that promotes theatrics in the courtroom should be deterred. The thespians in the legal profession . . . need no urging, and the system should not encourage them by enlarging the audience." Do you feel the media coverage prolonged the trial? Do you fell the coverage encouraged the parties to engage in any such theatrics or stage fright?

The Standard-Times

SOUTHEASTERN MASSACHUSETTS' LEADING NEWS AND ADVERTISING MEDIUM

555 Pleasant Street, New Bedford, Massachusetts 02742

May 4, 1984

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator Thurmond:

Thank you for the opportunity to reply to your questions concerning my testimony to your committee on April 24.

I will do my best to respond to your questions as I understand them, in the order you present them.

1. Extent of Coverage

I regret that my remarks could lead anyone to think that I consider the consequences affecting the rape victim as insignificant.

As explained in my report, The Standard-Times undertook extreme steps to not reveal the victim's identity. And it undertook extreme steps to help assure that certain potentially prejudicial information was not published during pre-trial proceedings.

Your question hints that it might be possible for the media to anticipate when a story will tap deep national interest, and that someone, somewhere, might be able to turn off the spigot of information.

I don't think anyone in the media can reliably predict when a story will generate intense national interest.

In that sense, no one can "justify" the extent of coverage. Rather, we must focus on how reliably accurate was the information that was provided.

Contrary to certain reports that have been published in the aftermath of the Big Dan's trial, my investigations show that early news accounts by The Standard-Times and other regional newspapers were reliable and accurate.

In short, we did report the facts of the case. And in reporting these facts, the Big Dan's case became a major national story.

This was not predictable at the time the victim first reported the details to police. The national reaction also was not predictable when The Standard-Times published its first story.

Who could have predicted, for example, that the basic facts of the Big Dan's case would trigger a public outcry so great that some 2,500 people marched in a candlelight parade through the streets of New Bedford.

Although rare, this kind of public response to a social calamity comes with a free and open society.

That this may weigh heavily, in this case, on the victim is unfortunate.

But in our system of government, I see no way of reliably avoiding it, as harsh as that may seem.

Please keep in mind that this was not a Sam Sheppard-type case, where the pre-trial and trial publicity was outrageously prejudicial, and the trial itself was a public circus.

Two fair trials were achieved, right here in Bristol County.

Reporting on the Big Dan's case centered on the horrible details of this crime. Those details crystalized the public's outrage about the crime of rape.

Sadly, the victim of the Big Dan's rape case did undergo a severe disruption in her life.

But the greatest embarrassment and trauma of all occurred that night inside Big Dan's Tavern.

2. Voluntary Restraint

Guidelines

When I refer to "most" of the media withholding the Big Dan's rape victim's name, this is not an inconsequential reference.

This means literally thousands of media outlets across the country to this day have not used the victim's name in news reports.

The aggregate total of readers of newspapers and magazines, of viewers and listeners of television and radio, amounts to millions of people.

For an industry comprised of thousands of independent newsrooms across the country - independent in their operations and thinking - thats a good track record.

The only reason the three newspapers began using the victim's name was because no one thought to make sure her name was "bleeped" in the live radio and television coverage

As I testified earlier, this problem is easily remedied in the future.

No national search for new guidelines is required, because they are already in place, state by state.

The three newspapers that published this victim's name would not have done so if her name had not been broadcast in live court coverage.

In the future, if the name is "bleeped" then the problem is "bleeped."

No problem.

3. Sanctions

Sanctions cannot, should not, be viewed as a workable alternative to voluntary guidelines.

Most states now have Bench-Bar-News committees at work, in one form or another.

I am the co-chairman of our Massachusetts committee, which operates under the Massachusetts Bar Association.

The secret to our success, and the success of similar groups across the country, is that we come to the table to discuss our conflicts voluntarily.

The guidelines that we may draw up for the bench, the bar and the media are embraced voluntarily.

To suggest sanctions from some unknown arbiter would destroy the successes these committees have been enjoying for the past two decades.

Our committee in Massachusetts is composed of judges, lawyers, and representatives of newspapers and broadcast stations.

We meet to review our various conflicts not because we are required to do it, but because we willingly see the need to do it.

No sanctions can or should be imposed against those who do not voluntarily embrace such guidelines. This would be a step toward licensing the media, which is clearly unconstitutional.

The only successful avenue is traveled voluntarily. In the end, the public will be our judge.

3. Publishing Irrelevant Facts

I am unclear about what facts to which you refer as being either irrelevant or "often incorrect."

I would add here, however, that public records at police stations and at courts are not available for "anyone expressing an interest in the case with the motivation to read it."

Police and the courts in Massachusetts - unfairly, I think - restrict access to such information to people who have a need or direct interest to see it.

Thus, the media is the only outlet for the public at large for this type of public information.

Even so, there are many instances where such public information is withheld from the media.

4. TV in Appellate Proceedings

I do urgently recommend television coverage of at least certain stages of appellate court proceedings. This recommendation extends to all courts - state, federal and even the United States Supreme Court.

Great benefits can occur to the courts and the public by televising at least some of their activities.

Arguments and decisions taking place inside courtrooms affect all our lives.

Weighty issues of our day are being decided more and more by these courts - issues involving public health and safety, involving labor and management, education, states' rights, and so on.

The public would gain greatly by being able to view the debates inside the high courts of our land.

They are anything but boring. They affect our lives, sometimes changing our society.

Millions of people would be glued to their television sets to see and hear debates on prayer in classrooms, abortion, public funds for private schools, media issues, and so on.

Abraham Lincoln said: "Let the people know the facts, and the country will be safe."

Television is but a new way to keep the people better informed, to give them the facts. More than this, as in televising the Big Dan's trial - this medium helps people to better understand their government, increasing their confidence in the way it works.

5. Disruptive Effects of News

My written report provides details on steps undertaken by The Standard-Times to voluntarily withhold certain public documents during the pre-trial stages of the Big Dan's case.

By voluntarily embracing the guidelines described in my written report, I do pay strong attention to such matters.

Most editors do.

We first do all we can to make certain that our reports are accurate, fair and honest.

In my report you will see references to The Standard-Times not publishing certain information obtained in pre-trial court proceedings.

We also declined to publish an interview obtained from a defendant in the Big Dan's case. We declined in part because some of the information in that interview violated our guidelines with regard to pre-trial publicity.

6. Media Trial Coverage

No evidence even hints that the Big Dan's trials were prolonged by broadcast coverage of the trials.

Judge William G. Young was too meticulous, too good at directing those trials, to permit participants to engage in theatrics.

I do not know if the Judge had to speak with any of the lawyers about this. But from all I have heard, Judge Young kept a very tight grip on the proceedings.

I also believe the cameras did not provide stage fright beyond the level that participants would ordinarily feel inside a packed courtroom.

The cameras were unobtrusive and silent. No artificial lighting beyond the regular lighting in the courtroom was allowed.

I most emphatically disagree with Judge Jack Day's remarks in The Case Against Cameras in the Courtroom.

Now, if Judge Day said "some" of the media is mainly interested in "good theatre" then I might agree.

But to lump hundreds of newspaper editors as well as hundreds of responsible television news directors in this generalization is wrong.

I agree that there should be no encouragement toward theatrics. But this is under the control of the presiding judge.

A theatrical lawyer will be theatrical for the jury and a packed courtroom. No television camera is needed for those of theatrical bent.

If a judge can control this with a packed courtroom, then control is also possible with a television camera present.

Thank you again for the opportunity to answer your questions. I would be glad to answer any additional questions you may have.

Sincerely,

James M Ragsdale

James M. Ragsdale
Editor

Senator **Specter**. Mr. Ragsdale, thank you very much.

Our next witness is Ellen Guyker.

As I understand it, Ms. Guyker, you were a rape victim back in 1978 yourself?

STATEMENT OF MS. ELLEN GUYKER, MARYLAND

Ms. **Guyker**. Yes.

Senator **Specter**. Under circumstances where you were reluctant to have the incident reported, but a report was made by your husband, and you were given assurances that you would not be publicly identified, but you later were, and as a result of that you left the community where you lived?

Well, we appreciate your being with us. You, of course, know that you are being televised at the moment?

Ms. **Guyker**. Yes.

Senator **Specter**. OK. Tell us about your own experience on the situation.

Ms. **Guyker**. I would like to read——

Senator **Specter**. That would be fine.

Ms. **Guyker**. In January 1978, when I was raped in my home, I was adamant that I did not want to report the crime. I had been devastated, and did not want to magnify things by having to deal with people's reactions. I did not report the rape. My husband did.

The police arrived and took me to the sexual assault center at the county hospital. While there, I decided to file a formal police report, after talking with the police detective and a counselor.

I felt that by reporting I could help to work things out for the better. Perhaps I could save someone else from this man. Perhaps by facing this I could come to grips with the terrible thing that had happened to me. Reporting also gave me back a sense of control over my life which I had lost. And I felt assured that the incident would not be publicized.

That afternoon, my rape was reported on the television and the radio. That week it was reported in the newspaper. My age, address, and occupation were published.

Senator **Specter**. And your name?

Ms. **Guyker**. No, sir.

Senator **Specter**. Your name was not?

Ms. **Guyker**. No. My age, address, and occupation.

Not only was I hurt and angry from the assault, I was now ashamed and embarrassed, wondering who knew, what were people thinking, what were they saying.

I found out that several neighbors had discussed my assault. One had commented well, she did let him in. One close friend told me her husband did not want her to come back to my home anymore, in case the rapist returned.

Another friend sent a note extending her sympathies, but explained that she was unsure of what to do, and how to react to such a thing.

Since I have shared my experience, women and men, some of them friends, have opened up and shared their stories with me. They have told me privately that they were raped, but did not report it.

One, a woman who was raped by her husband in a drunken state, told me, who would have believed me. I felt bad enough as it was.

Another lady, now the wife of a minister, was set up on a blind date by her cousin, by a man who raped her. Back in those days she told me you just did not talk about those things. After all, he was a friend of my cousin. What would people think of me?

Another, a man, was approached from behind by another man, who told him what he was going to do to him. This man told me he decided he would die before he let another man rape him, because that was the worst thing that could happen to a man. He said he had been unable to talk about it to anyone.

Rape needs to be reported, not only for the benefit of society, but for the benefit of those who have been raped. They need to be able to talk about their feelings, to work through their anger, and the loss of feeling safe, they need to feel that they can be in control of their lives again, and they cannot do this if they fear reprisals or stigma.

Our country has a free press. It should be regarded as a national treasure. The media is very powerful in today's society. They have an unequaled opportunity to educate. They have the ability to dispel some of the myths surrounding rape. Publishing particulars about rape serves no purpose other than to satisfy the curious.

As I pointed out earlier, even though many people knew me, and knew of my rape, few actually used that knowledge to help me. Nor do I think they gained anything from knowing I had been raped, other than the fear of it hitting so close to home.

People might become more inclined to report this crime against both body and integrity if details of their private lives were published only with their consent. Perhaps reporting the rapist's modus operandi and the general location of the crime would alert an educated public.

But publishing details of alleged victims' lives perpetuates the intrusion. To me it felt like another intrusion, another rape, if you will.

The media has an unequaled power to affect the attitudes of society. Their public responsibility, inherent in their rights granted by the first amendment should dictate a sensitivity to the needs of those they serve.

Senator SPECTER. Ms. Guyker, we very much appreciate your appearing here and testifying about what is obviously a very difficult situation to you.

You mentioned that the rapist had gained access to your home. What were the circumstances of that?

Ms. GUYKER. He answered an ad I had placed in the paper, to sell something.

Senator SPECTER. And was he convicted?

Ms. GUYKER. Yes, sir.

Senator SPECTER. Do you recall his sentence?

Ms. GUYKER. Four life terms.

Senator SPECTER. Four?

Ms. GUYKER. Yes.

Senator SPECTER. Four life terms?

Ms. GUYKER. Yes, he had raped several people before.

Senator SPECTER. So there were joint—it was a trial with joint complaints in it?

Ms. GUYKER. That is my understanding, yes. It is not exact.

Senator SPECTER. Ms. Guyker, what is it that has made you willing to come forward and testify at this point, when you were originally reticent, as you already testified?

Ms. GUYKER. Because I felt it would do some good. I felt I could offer something that a lot of people did not know about.

Senator SPECTER. Under circumstances where there was a report of your age and address, and you say occupation?

Ms. GUYKER. Yes.

Senator SPECTER. Do you think that that kind of publication discourages other women from reporting rapes?

Ms. GUYKER. Definitely.

Senator SPECTER. What do you think about the New Bedford trial, and the circumstances relating to the publicity of the victim in that rape case? Do you think that she was fairly treated by the news media?

Ms. GUYKER. Not really. I think there was a prejudice against her.

Senator SPECTER. Do you think that it is desirable, overall, to have such a trial on television?

Ms. GUYKER. No.

Senator SPECTER. Why not?

Ms. GUYKER. I think it is very hard to make it fair. I think when you are involved in a trial, you are involved in it, from beginning to end. You have to look at all the evidence.

I do not think the public is able to do that, and to come to a fair conclusion.

Senator SPECTER. Traditionally, when there is the so-called balancing test on constitutional rights of the press, to have access under the first amendment, and the defendant to a fair trial, it is the balancing of those two interests.

Do you believe that the rights of the victim should also enter into the so-called balancing test, when a decision is made on whether to have publicly televised trials?

Ms. GUYKER. Absolutely.

Senator SPECTER. Do you think that the New Bedford trial will discourage other women from coming forward to report rape?

Ms. GUYKER. Yes.

Senator SPECTER. Why do you say that?

Ms. GUYKER. Because of the invasion of the woman, they wanted all sorts of information about her. I did not realize that the press had been following her around, until I came to this hearing today.

Senator SPECTER. You say you did not realize that what would happen?

Ms. GUYKER. That the press had gone around, gone to her doorstep. I think that is horrendous.

Senator SPECTER. In your situation, did the press come to your doorstep?

Ms. GUYKER. No, sir.

Senator SPECTER. But people were obviously able to identify you, when your name, occupation and address——

Ms. GUYKER. Not my name.

Senator SPECTER. Pardon me, not your name. But your occupation.

Ms. GUYKER. Yes.

Senator SPECTER. Your age and your address?

Ms. GUYKER. Yes.

Senator SPECTER. Well, thank you very much, Ms. Guyker. We appreciate your willingness to come forward.

I take it at this stage that what you have to contribute is worth coming forward and testifying here today, and that you have gained an additional inner strength to talk about this?

Ms. GUYKER. Hopefully.

Senator SPECTER. There will be some questions submitted for the record by Senator Thurmond, and perhaps others, Ms. Guyker, and Mr. Ragsdale, and our committee practices are to request that you respond to such questions in writing, if you would be so kind to do so.

Ms. GUYKER. When will that be?

Senator SPECTER. Well, he will submit them in the course of the next few days, and then you will have a reasonable period of time to respond.

Ms. GUYKER. All right.

Senator SPECTER. Thank you very much.

Our next witness is Jennifer Barr.

Ms. Barr, we very much appreciate your being here, and according to the information, you have been a victim of rape, and wrote a book about your experience. We very much appreciate your submitting testimony, it will be made a matter of the record in full, and if you could attempt to summarize that, we would appreciate it.

STATEMENT OF MS. JENNIFER BARR, RAPE CRISIS COUNSELOR FOR 5 YEARS, MEMBER OF THE BOARD OF DIRECTORS OF HOWARD COUNTY SEXUAL ASSAULT CENTER, HOWARD COUNTY, MD, FOR 6 YEARS; VICTIM OF RAPE 8 YEARS AGO AND AUTHOR OF "WITHIN A DARK WOOD," THE PERSONAL STORY OF A RAPE VICTIM

Ms. BARR. OK. It is hard to summarize.

Basically I am trying to briefly tell about some of the feelings that I had after the rape, the fears that paralyzed me went beyond the fear of the assailant coming back to me. I was afraid of everyone.

I did not know who I could trust, or where I was safe. I was afraid I would not be believed, that people would blame me for it, that people would judge my actions, reactions or motives. And as time passed, my fear of judgment proved valid.

I had begun to recover my self confidence 8 months later when my assailant was arrested, and my fears were rekindled. But when they were rekindled, the difference was that my original fears had been based on the behavior of one individual.

When I was facing the court, my fears were about the system that I had turned to for help, that as the trial approached, I was filled with misgivings, fearing judgment, feeling manipulated and controlled, feeling invaded and vulnerable again.

The trial was only equaled by the rape itself, and the trauma that it created in my life. It is not uncommon for victims facing trial to experience deep depression, extremely low self esteem, incapacitating fears and doubts.

To some victims it is not worth it. Some victims back out, risking the judgment on their veracity, or even prosecution by the court, others have committed suicide. I considered the latter as my only option out before the trial.

To testify at the trial, to recount all the details, was the hardest thing I have ever done, even with the support of many in the courtroom. I was forced to relive the rape in front of strangers and my assailant, and then to face a cross examination designed inherently to discredit the witness. The defense attorney is an expert in planting doubts about the witness and her credibility. That is his job.

It took strength I did not know I had, and a lot of support from friends and family to endure the humiliation and public exposure. I was aware that the court proceedings were open to the public, and it threatened me. I wanted to know who the people were that were in the courtroom.

If I had had to face TV cameras in that courtroom, being exposed to anyone in the community at the flick of a dial, I can say with certainty I would not have testified. I would have lived with the fear that any rape or sex-related murder I read about in the paper might have been at the hands of the man I might have stopped before he hurt someone else.

I have worked as a counselor with many victims, and have read studies of victims that led me to believe my feelings were not unique to me. I believed that strongly enough to write a book about my experience.

As an author, I became part of that media we are addressing today. The difference is that it was my choice that I went public, and I did it because I felt that the public did need to know what was beyond the trial and the news report that showed a very narrow perspective of that I had endured for 2 years, from the time of the rape until the final court action. It was a long story that took me a book length to tell.

My ordeal was more than a newspaper article, more than my 2 hours of testimony. I had it published when I was psychologically and emotionally ready. It was my choice.

Superficial coverage of rape stories can hurt the innocent. In talking about the difference between press and television coverage, the press can inadvertently injure a victim, as the previous victim had discussed, and a victim that I worked with was identified by general address, occupation and place of employment. She never had the choice of whether she wanted her fellow employees and friends to know. She said, "my right to privacy was already stripped from me by that one individual. Now it has been totally invaded. And I was not the one who did anything wrong."

The TV camera in the courtroom can neither by sympathetic or supportive of the victim, nor can it improve the lot of other victims by showing what victims go through. The view of that camera is shallow, it is the reflection on the surface of the water.

When a trial becomes a showcase, injustice is done to all of the victims. The public does have a right to know that rape occurs, any place, any time, to anyone. But the media does not serve that end by exposing only the most violent and dramatic crimes. The public should be enlightened about the injustices that take place in our courtrooms. But is that end served by telescoping details of an isolated courtroom drama?

Only when victims are treated with respect will they pursue reporting and prosecuting rapes. Victims have been reporting more in recent years, due largely to the increased sensitivity of the police and prosecutors who have received specific training to assist rape victims. Unfortunately, the press has not had this special training. With the exploitation of rape by the media, victims will again think long and hard before going into a courtroom.

Victims need protection, not exploitation. The victim has been manipulated, invaded and controlled by a criminal. The media does not have the right to assault the victim again. As surely as an assailant is held responsible for this invasion of a woman's life, the press must also be responsible.

Thank you.

Senator SPECTER. Thank you very much.

Would you mind telling us just the essentials as to the rape itself, where you were, what happened, if you do not mind?

Ms. BARR. I was in a park, taking photographs. It was a fall morning, and it was by a stranger, that just grabbed me, had a knife.

Senator SPECTER. In the morning?

Ms. BARR. In the morning.

Senator SPECTER. Broad daylight?

Ms. BARR. Broad daylight.

Senator SPECTER. In a park, other people around?

Ms. BARR. Yes; just not close enough around.

Senator SPECTER. And how old were you at the time?

Ms. BARR. I was 30. And I reported it immediately. I did not even think about reporting it or not. After the assault occurred, I just went—I drove home, and called instinctively.

Senator SPECTER. And the trial occurred under circumstances, obviously without television coverage?

Ms. BARR. Right.

Senator SPECTER. Newspaper coverage?

Ms. BARR. There were two trials, and at the second trial there was some press coverage.

Senator SPECTER. But not heavy coverage?

Ms. BARR. No.

Senator SPECTER. Well, obviously many, many rape cases are heard in our criminal courts every day.

Ms. BARR. Yes. Yes; just a small newspaper coverage. It did make the papers, you know, that the assault made the papers, the arrest made the papers, and the trial made the papers.

Senator SPECTER. Was the defendant convicted?

Ms. BARR. Yes; he was.

Senator SPECTER. And do you recall the sentence?

Ms. BARR. He was sentenced originally to 10 years, and then that was reduced to 5 years.

Senator **Specter**. He was given a new trial? He had two trials? He was granted a new trial, an error the first occasion, and you went back and had to testify again?

Ms. **Barr**. Yes.

Senator **Specter**. How long were you on the witness stand?

Ms. **Barr**. It was about 2 hours each time.

Senator **Specter**. Do you think that the judicial procedure that you were subjected to is a discouragement for women reporting the rape cases?

Ms. **Barr**. I think that a lot of education—the victims need a lot of educating. When I went, there was a big difference between the first and the second trial in my case, in my dealing with it, because the second time I went through it I was more aware of what—what I had to go through, and things like at the first trial, I was not told until I took the witness stand that I would have to state my name and address.

I took the witness stand, and the first thing they asked was, state your name, and I said what. And the assailant is sitting right there.

At the second trial I said if you want me to testify at the trial, I am not going to state my name and address publicly. So I had some control, because I knew something of what to expect, and I think a lot of what a victim has to deal with is getting that sense of control back, and not feel like she is feeling manipulated, and treated like evidence.

Senator **Specter**. This is probably a subjective question, but do you think that many rapes are not reported because many women are reluctant to go through the process of telling the police, and appearing in court?

Ms. **Barr**. Victims that—in coming here today, I talked to a number of victims that I have worked with, both that had reported, and some that had not reported.

Those that reported all said they just did it instinctively immediately afterwards. Those that stopped and thought about it were the ones, you know, that did not report.

Senator **Specter**. But do you know many women who have been raped who have not reported it?

Ms. **Barr**. Yes. I know—yes, quite a few.

Senator **Specter**. How about the New Bedford trial? Do you think the victim was fairly treated by the media coverage?

Ms. **Barr**. No, sir; I do not think that any victim, coming as a victim myself, I had a very difficult time covering all the hoopla that went on. To me it was a circus.

Senator **Specter**. Do you think television cameras should be allowed in the courtroom for a rape trial?

Ms. **Barr**. No, sir.

Senator **Specter**. Why not?

Ms. **Barr**. The difference with the press—well, the press—after I was raped, it was written up in the paper that a 30-year-old woman was walking in the park, and it said what happened. The difference between that and—if a TV camera had been there, I think there is a big difference in what a TV camera says and shows.

Senator **Specter**. Do you think it is appropriate for newspaper coverage?

Ms. BARR. I think there is a big difference.

When Mr. Ragsdale said about there are conditions over which the media has no control, I think when the TV camera comes in, and just shows what is happening, it leaves everything out of their control. It leaves the viewer sitting there in control of the proceedings. He is going through, making all the judgments, and can take action himself, which is very different than when you read something in the newspaper.

Senator SPECTER. You keep coming back to the aspect of control. Could you define that a little more fully?

Ms. BARR. Of control?

Senator SPECTER. Yes.

Ms. BARR. How did I just use it? As far as the victim, from a victim's viewpoint, when a victim is raped, her life is totally out of control.

I felt like, you know, he could have killed me at any moment. It took a long time, a lot of working with a counselor to get me to feel that I had any control in my life, you know, afterwards. I could not make any kind of simple decision, or anything.

And so after struggling to get some feeling of control over my life, going into the courtroom, and feeling like I—you know, I had no choice about anything. You will do this, you will say that, you will, you know.

And then when the press comes in, they do not ask, you know, can I take your picture, or can I use your name.

Senator SPECTER. The traditional balancing act is on the rights of the press, the Constitution, contrasted with the rights of the defendant.

Do you believe that there should be more consideration to the victim's rights, the rape victim's rights, in deciding what would be publicly televised in a courtroom?

Ms. BARR. I think that the victim is—the victim is the—it could have been anyone in society. It happened to be that one person. Life is not fair for that one person, that is true.

But why does the society that she turns to to help her, why should they turn around and be able to manipulate her?

Senator SPECTER. Do you think there are benefits to society, or to other potential rape victims, by having a New Bedford rape trial publicly televised?

Ms. BARR. Except only in the controversy that it brought up. But, you know, that the talk shows, whatever, that discussed the issue, that weight is brought up as a topic, but I think the negative effects of it far outweigh it.

I think that it really gave a distorted—any of these big sensational stories give a distorted picture of rape, because they are only the sensational stories.

Senator SPECTER. I thank you very much for coming and testifying. We know it is not always easy for you, and your testimony has been helpful.

[The prepared statement of Ms. Barr follows:]

PREPARED STATEMENT OF JENNIFER BARR

It has been eight years since I became a victim of rape but the memories don't grow dim they just surface less frequently. It is difficult to briefly convey the feelings a person experiences after an assault. There are so many fears that paralyze victims, that dominate their lives for months after the attack, that to be brief risks being simplistic.

The fears that paralyzed me went beyond only the fear of the assailant returning or finding me again. I was afraid of everyone. I didn't know who I could trust or where I was safe. I was afraid I would not be believed, that people would blame me for it, that people would judge my actions, reactions or motives. My fear of judgement proved valid as time passed. I heard I should have fought to the death rather than submit, that I should have known better than to be at the park alone. A psychiatrist asked me whether I enjoyed the assault and why I was still bothered by it six months later. For months after the rape I isolated myself in my home, afraid to face anyone, afraid to open my door.

I had begun to recover my self confidence eight months later when my assailant was arrested, and my fears were rekindled. As the trial approached I was filled with misgivings about the court process - fearing judgement, feeling manipulated and controlled, feeling invaded and vulnerable. The trial was only equalled by the rape itself in the trauma it created in my life. It is not uncommon for victims facing trials to experience deep depression - extremely low self-esteem, incapacitating fears and doubts. To some victims it isn't worth it, some back out risking the judgement on their veracity or even prosecution by the court, others have committed suicide. I considered the later as my only option out.

To testify at the trial, to recount all the details in a courtroom, was the hardest thing I've ever done, even with the support of many in the courtroom. I was forced to relive the rape in front of strangers and my assailant, and then to face a cross-examination designed inherently to discredit the witness. The defense attorney is an expert in planting doubts about the witness and her credibility. That's his job. It took strength I didn't know I had and a lot of support from friends and family to endure the humiliation and public exposure. I was aware that the court proceedings were open to the public and it threatened me. If I had had to face TV camera in that courtroom, being exposed to anyone in the community at the flick of a dial, I can say for certain I would not have testified. I would have lived with the fear that any rape or sex related murder I read about in the paper might have been at the hands of the man I might have stopped before he hurt someone else.

I've worked as a counselor with many victims and have read studies of victims that lead me to believe my feelings were not unique to me. I believed that strongly enough to write a book about my experience. As an author I became part of that media we're addressing today. I too exploited a rape - my own. By my own choice I "went public" because I felt the public should know what was beyond the trial transcripts and the newspaper reports that showed a very narrow perspective of what I endured for two years from the time of the rape until the final court action. It was a long story that took me a booklength to tell. My ordeal was more than a newspaper article, more than my two hours of testimony. I had it published when _I_ was psychologically and emotionally ready. I did it to help other victims and help society understand the essence of rape.

Superficial coverage of rape stories can deeply hurt the innocent. A victim I worked with was identified by the newspaper by general address, occupation and place of employment - her occupation was unique enough that she never had the choice of whether she wanted her fellow employees or friends to know. She said, "My right to privacy was already stripped from me by that one individual. Now its been totally invaded. And I wasn't the one who did anything wrong." A story that could help a reporter's career or a network's ratings can and does destroy the lives of innocent human beings.

Rapes that get heavy media coverage are the sensational crimes, the most violent, the most dramatic. This glorification of crime does not educate the public about the extent of the crime, the effect of the crime. It does not deal with the issue of rape. The grizzly, titilating details, the details that tend to identify and further injure the victim, do not serve the public good. The portrait these selected stories paint is a dangerously distorted one.

The TV camera in the courtroom cannot be sympathetic or supportive to the victim, nor can it help improve the lot of other victims by showing what victims go through. The testimony in the courtroom is only the tip of the iceberg of what she has endured. The camera doesn't catch the victim having to wait in a waiting room with the witnesses for the defense or when the victim is verbally abused by the defendant's mother when they meet in the hallway. The indignities suffered by the victims of our court system cannot be recorded by a TV camera in the courtroom. The view of that camera is shallow, it is the reflection on the surface of the water. When a trial becomes a showcase, injustice is done to all of the participants. There are limits to where the end does not justify the means. There must be a limit to the public's right to know over the victim's right to privacy.

The public has a right to know that rape occurs anyplace, anytime, to anyone. But the media does not serve that end by exposing only the sensational crimes. The public should be enlightened about the injustices that take place in our courtrooms. But is that end served by telescoping details of an isolated courtroom drama?

Only when victims are treated with respect will they pursue reporting and prosecuting rapes. Victims have been reporting more in recent years due largely to the increased sensitivity of the police and prosecutors who have received specific training to assist rape victims. Unfortunately, the press has not had this special training. With exploitation of rape by the media, victims will again be reluctant to go into a courtroom.

Victims need protection, not exploitation. The victim has been manipulated, invaded and controlled by a criminal. The media does not have the right to assault the victim again. As surely as an assailant is held responsible for his invasion of a woman's life, the press must also be responsible.

REPRINT OF ARTICLE WRITTEN BY JENNIFER BARR, JULY 2,1976

Rape

(it does happen)

soliloquy

A personal view

The following account was written by a Columbia woman who asked that her name not be revealed.

It was a sunny morning. I was close to home. How could I have predicted or prepared myself for that moment of eternity that shattered my world?

How could it happen to me? Rape is for dark alleys of distant cities. Rape is for women without names who disappear after the newspapers go to print. How could it happen to me?

I had taken the kids to a friend, so I had an hour or so to myself. The weather was gorgeous so I decided to enjoy a quiet walk. Others were out that morning too, but I was surprised that more people were not out. It was a perfect day.

A man was walking on the path toward me. As he approached he didn't seem to be enjoying the weather. "Perhaps he's walking off some frustration." He passed me.

Suddenly, an arm grabbed my neck. Above me the sky was still deep blue, still beautiful. In the terror of the instant the world stopped. I screamed like I I'd never know I could scream. "Shut up!" It was real. A knife flashed at my throat. "Shut up or I'll kill you." I stopped struggling.

He dragged me back into a brushy area. My driving thought was survival. Whenever he became tense, the knife was pressed to me tighter so I tried to appear calm. I occupied my mind with observing every detail I could about his features, his clothes, his walk. "He'd never get away with this . . . never." It seemed an eternity 'til he left me, though the ordeal was less than 30 minutes.

I saw no one on my way home. Where had everyone gone when I needed them? Certainly someone had heard my screams. Certainly someone had seen the man. No one was in sight.

I called the police immediately from my home, then called my husband. I tried to sound calm. "I need you home. It's very important." He worked only a few minutes from Columbia but as I waited for him and for the police I could only sit and stare and pick at the burrs on my slacks. They arrived almost simultaneously. The ordeal was not over yet.

The police were very gentle and concerned. The description of the man was the primary immediate concern. It was a relief that I didn't have to go into details of the event at that point. Later, I went to the police station to make up a composite picture of the assailant, then the agony of telling all the details, answering unpleasant questions, having my knife marks photographed for evidence.

My determination to do what had to be done held me through the medical exam too. That determination began to crumble when there was nothing left to do except wait.

I spent days sitting, waiting, staring, unable to function, weak from fears and lack of sleep. The terror of the initial shock returned again and again. It would flash into my mind and my knees would buckle. The ugliness of the incident filled every dark corner.

Friends were very upset and concerned but it was not easy for them to face the situation either. Some of their reactions were difficult for me to handle. "I know you don't want to talk about it." I couldn't think about anything else. I couldn't pretend to be interested in draperies and flower gardens. There was nothing I could say. "You're just torturing yourself by thinking about it." There was nothing I wanted more than to stop thinking about it, to forget that it ever happened. I stopped telling people that it happened.

My husband was very sympathetic but felt we'd soon all be back to normal. After a week and a half, my husband too was exhausted and he called my mother to take care of the kids. I thought I'd be okay if I could get some rest. My nervousness, my lack of motivation, my lack of control of my thoughts, must be due to fatigue.

Even without the kids, I still couldn't sleep. I realized I couldn't just shake off my fears and feelings. They were like a leech firmly attached to my mind. I could not have believed it would take months before my life resembled the "norm" I was hoping would return in days.

My self-image was the first to erode. I had felt I was self-sufficient, able to take care of myself. I'd traveled often alone, even traveled across the country with infants. Suddenly I was helpless. How could I take care of my kids if I couldn't even take care of myself?

I felt like everyone knew and was staring at me. Strangers were passing judgments. Somehow I was guilty, somehow I could have avoided it, somehow I had done something wrong. My style of dress changed – the layered look was in with me. I stopped wearing jewelry and make-up, anything that would call attention to my body.

I was afraid of everyone. Every man, stranger or friend, was a potential enemy. I avoided people yet was afraid to be alone. I wanted to be a room fixture where I could listen, observe, be there, yet no one would talk to me or see me. I felt like a leper – something must be different about me. Something was different about me. I was a rape victim.

My tensions and depression affected everyone in the family. My husband was very sensitive to my needs and took over many chores that I couldn't deal with. I couldn't go out alone, so he accompanied me on any essential outings and took over shopping trips. The kids felt the tensions and responded by needing more attention themselves, another function my husband took on. As his work load at home mounted, he was afraid to release much of his frustrations to me. I was not the only one suffering the effects of the crime. My husband realized sooner than I did that I could not snap back to normal immediately.

I had been in contact with the Rape Crisis Center soon after the incident, but I was not aware of how they could help. I didn't want to talk about it to strangers. I felt I had to deal with it myself. One evening they called to invite me to join a series of rap sessions with other rape victims. The timing was right. I knew I had to do something to help me deal with the fears and emotions that had been overwhelming me for six weeks.

I pushed myself to attend even though I would come home exhausted and more nervous. Gradually, I found I could talk. Just meeting other victims was such a help – I was no longer alone. I discovered my reactions weren't unique to me, that I was not just weak or neurotic.

Cautiously, I found other people I could talk to also. By talking I began picking up the pieces of my shattered world and re-evaluating each piece before I put it back in its place. After many months of struggling, I am finally reconstructing myself – a self that is able to face life with some hope and confidence. Now the nightmares are less frequent, the fears are less consuming.

I am not through it all yet. Rape remains a very sensitive subject. I become irate at any hint that it is not being treated with due seriousness or is being misrepresented. I am still uneasy and suspicious of men. My assailant has not been caught yet. If he is, I will have to undergo the agony of going over it all for the prosecution. If he is not caught, I must learn how to live with my bitterness and anger.

There have been some good effects of the situation. Any traumatic event causes changes. I hope that in re-evaluating my values, my faiths, my dreams, I have grown and learned. I think I have a more realistic appraisal of myself now. I am more aware of the value as well as the fragility of life. My husband and I are closer as new channels of communication and understanding have opened between us. We know and appreciate each other more. I think we are both more sensitive to other people's needs than we were. A crisis forces us to grow. It isn't the easiest way to learn empathy and tolerance. Experience can be a cruel teacher.

It has taken many months but I have sorted through enough feelings to finally accept the reality of my situation. Rape is a violent crime and I was an innocent victim. All humans are vulnerable in some form, but we can't be repressed by fears that limit our activities and enjoyment of life.

If we can stop whispering about rape, perhaps the myths and stereotypes of the crime and those involved will disappear and the reality of its ugliness and senselessness will be exposed. The myths are endless but a few have haunted me more than others.

1. It does happen. Anytime, anyplace, to anyone.

2. No one "asks for it." By definition, rape is forcible. Some people take comfort in passing judgment on the victim's appearance or character. "She bleaches her hair." "Her skirts are too short." If this is a defense for rape, we must all turn to the example of the Afganistanis and cover ourselves head to toe and never go out of our homes.

Desiring to be "attractive" does not mean attracting rapists! We are constantly told how to be sexier. A woman who "flaunts what she's got" is no more asking to be raped than the man who flaunts his money is asking to be robbed. Even the drunken woman is no less to be pitied. Her defenses are down. She knows the powerlessness of her situation. But it is no more an "invitation" to rape than it is to murder. Any unwilling participant is a victim of rape.

3. Rape occurs in many forms. It can happen in a dating situation or at gunpoint. It is still rape. The psychological effects are not very different, except that a woman raped by someone she knew and trusted is less likely to report it, more likely to take the guilt on herself.

4. Rape has been romanticized in fiction and on Freudian couches. Being totally overpowered and treated like the schoolboy's insect whose wings are being pulled off is not something day-dreams are made of. The media often have confused rape and seduction and rarely portrays the long-lasting devastation the victim feels. Even more elementary, the misconceptions begin in the fairy tales. Does any child, or any parent, ever question whether or not the fair damsel wants to be carried off by Prince Charming?

Society's awareness and concern about rape and its victims has come a long way in recent years, but we still have a long way to go. The crime is being written. Through education and exposure, the distorted conceptions of society will stop being the maggots that impede the healing of a vicious wound. Victims need support and understanding. Listening without passing judgment is the greatest need. Avoiding facing and discussing the crime is the most damaging to the whole situation.

In Howard County, there are many aware people who are very supportive of victims and actively work to educate and inform the public. Howard County's Rape Crisis Center has helped me through this mire. They are readily available for counseling and speaking to any individual or group. For information or help, call their Hot Line, 997-3292.

Senator SPECTER. I would like to now call Ms. Lynn Marks, executive director of Women Organized Against Rape.

I would also like to call Ms. Jo Beaudry, coordinator, Victim/Witness Services, Office of the Milwaukee District Attorney.

We are proceeding somewhat longer than we had anticipated.

Ms. Marks, we welcome you here. You are the executive director of Women Organized Against Rape in Philadelphia. We very much appreciate your being here, and we appreciate the submission of testimony, which will be made a matter for the record in full, and to the extent that you can summarize, we would appreciate it.

STATEMENTS OF A PANEL CONSISTING OF LYNN MARKS, EXECUTIVE DIRECTOR, WOMEN ORGANIZED AGAINST RAPE, PHILADELPHIA, PA; AND JO BEAUDRY, DIRECTOR, VICTIM/WITNESS SERVICES UNIT, MILWAUKEE COUNTY DISTRICT ATTORNEY'S OFFICE, MILWAUKEE, WI

Ms. MARKS. I would first like to give a personal thank you to the two women who spoke prior to me. I know from experience that it is totally different when you talk about your own rape or incident than it is talking as a professional or as an attorney in the field, and I really do thank them for all of us, and for all of us in the field.

Women Organized Against Rape is one of the oldest and largest rape crisis centers in the country. We assist thousands of sexual assault victims and their families through our 24-hour hotline, through crisis counseling in the hospital emergency rooms and in court.

My testimony addresses the impact of the media on victims and on the public. But I would like to say, first of all, a little bit about some of the impacts that I see coming out of the New Bedford case, which has been discussed so much today.

In Philadelphia, to our knowledge, we know of no women who have asked to drop their cases because of the New Bedford case. We obviously cannot know exactly how many are not reporting because of that coverage, but the calls on our hotline, which are traceable to this incident, were basically calls about laws and procedures, and asking whether or not the system in Philadelphia is similar to the one in New Bedford.

Following that, and following those questions, in particular, we used the media to let the women of Philadelphia know that our procedures are different, that cameras are not allowed in the courtroom, that victims' names will not be published, and that the system does not allow as much of a "fishing expedition" as we saw in New Bedford.

Senator SPECTER. Did you sense from that, Ms. Marks, that had television been available in the Philadelphia courtrooms, that some of the women whom you talked to would not have come forward?

Ms. MARKS. Absolutely, and I will get into that later. I think that the press can cover a rape trial adequately, without cameras in the courtroom.

On the general level, I think that the New Bedford case was gruesome for that victim. But I think it served a purpose raising the national consciousness of rape, and rape prosecution, in further getting the issue "out of the closet" and into discussion.

Jill Porter said in her column, "turning the Spotlight on Rape"—Philadelphia Daily News, March 30, 1984—that there are certain cases which crystalize public consciousness, and become symbols that transcend the facts. There is the Kitty Genovese case in Queens a number of years ago, which really made people think about urban apathy, and people afraid to come forward.

The whole issue of Karen Ann Quinlan crystalized the notion of quality of life and the right to die. John Hinckley's shooting of the President made us think about the insanity plea.

The murder of the Scarsdale diet doctor made us think about the plight of aging women, and their relationships, and I think that the *Big Dan's* case has really made us stop and collectively ask, is rape still a sport in this country, and exactly who is on trial when the charges come to court.

At least here we can show the outrage that that woman had to endure in court. On the other hand, however, the conviction is really a signal that the people of this country, through the jury on that case, were able to see and focus on the incident, and not get swayed by the irrelevancy of the individual woman's background.

I would like now to get into three major points having to do with the media.

First, the media coverage of rape cases and rape trials in general. I see a different effect on individual victims, than I do on society at large. Second, the use of victims' names in the media. And third, cameras in the courtroom in sexual assault cases.

Media coverage of individual trials adds only additional pressure to the already traumatic ordeal of a rape prosecution. Just knowing that reporters are going to write about the incident, and perhaps editorialize on it, can feel like another rape.

The fear of publicity is not the only reason that women are reluctant to report rapes. My testimony outlines a number of those reasons, but very briefly, women do not report rape because they may be afraid of retaliation by the assailant, his friends or family.

Some women do not report rape because they may feel embarrassed to have to say in front of total strangers that they may have put themselves in a vulnerable position. They do not want to report because they do not want to be called "stupid" because they were walking alone at night; "provocative" because they were wearing a certain style of clothing; "loose" because they went into a bar to buy cigarettes, and so forth, and some women just want to forget.

So, yes, the possibility of media coverage does have an effect, but I do not think that is the only one. I think a broader issue to look at, and probably what you will be looking at, is the impact of media coverage on society at large.

As I said before, publicity exposes rape as a societal problem, and not as an isolated incident between individuals. That is important because for years rape and the sexual abuse of children were not talked about publicly, and they did not receive media attention. Thus, victims felt very isolated and alone.

So even though publicity can be difficult for individual victims, in the long run, I think it can be beneficial. I will qualify that, though, and say that it can be beneficial if the media does in a responsible manner.

I would like to give some suggestions for responsible coverage.

First, the coverage should not be sensationalized. Headlines, such as—and this I took from the Philadelphia Daily News, October 4, 1982, the headline said, "Raped, cut, beaten, she lived to testify," in big letters. Headlines like that serve to heighten most women's fear of rape.

Coverage should not result in the public getting vicarious thrills from the coverage. Sometimes when I am interviewed by the press, right before I go on, the reporter says "get angry, get outraged, get emotional." They do not want to hear me discuss the issues.

I think it is very important for the public to hear what the issues are, and the press sometimes does not want to talk to us at all. Rather, they want to talk to a victim, and they want to have that particular victim crying at the time. I believe that is irresponsible coverage.

Second, coverage should not polarize, such as presenting one-sided articles. A few examples of that are some of the coverage of the New Bedford rape, some of the coverage of a recent publicized rape at a fraternity house at the University of Pennsylvania, and there are certain radio call-in shows where the announcer will say "call in and give your opinion on one side or the other."

Rape trials, as it is, are adversarial in nature, and the media should not fall into polarizing it further. Articles on rape should not be placed next to photographs of sexy looking women and macho men, or next to ads for pornographic movies.

An example of this occurred a number of years ago when there was an extremely brutal rape of a lawyer in Suburban Station in Philadelphia, and an article on it was placed right next to an ad for an outdoor swimsuit beauty contest which was being held near the station. I think people sometimes draw some kind of relationship between different articles.

Also, articles or editorial cartoons which make a mockery of a rape victim's plight, or imply that a woman asked for it, are personally hurtful to victims, and I do not consider these responsible coverage.

The effect of coverage also depends on the kind of rape cases which the media chooses to cover. All we hear about are rapes between strangers and gang rapes so the public has a false notion of what really exists. Only seldom do we hear about rapes between acquaintances, between relatives and dates, yet those comprise the majority of sexual assaults.

I think the outcome of publicized trials also has an impact on whether women will report. If 9 out of 10 rape cases which were covered by the press end up in acquittal, and yet the conviction rates are quite higher, that might deter women from reporting.

Magazine and newspaper features on rape, radio and television talk shows, and made-for-television movies help focus attention on the reality of what victims must endure.

Any time one of these kinds of shows is aired on television or radio, our hotline rings off the hook from people who say that happened to them, that they did not know it happened to other people, and here is a safe place to call. We encourage more television dramatizations of sexual assault, and ask that the writers and producers consult with rape crisis counselors and other professionals in the field.

The impact of publicity also depends a lot on how rape trials are conducted——

Senator SPECTER. I do not want to hurry you unduly, but we are running late. Could you summarize the rest of your statement?

Ms. MARKS. All right.

My written testimony mentions different jurisdictions and whether publicity gives rise to imitation. I urge you to read it.

I just want to cover briefly the issue of names of victims used in the media. The printing or broadcasting of names in the media increases the reluctance to report. Perhaps if victims were no longer stigmatized in our society, and no one asked that women be sexually assaulted any more than they ask to be physically assaulted or burglarized, I might feel differently. But for now, it is important that names not be used.

In terms of cameras, I feel even more strongly that cameras not be allowed in the courtrooms. I think the very knowledge that cameras will be there will decrease even further victims' willingness to come forward. And even if a judge bans the filming of her face, just the cameras alone are intimidating.

I am not in a courtroom now, I am not talking about my own incident, but yet I am very aware of the cameras here, and I think that other people are, even if the cameras are hidden.

The idea of going over your personal nightmare in front of a judge and jury, but also to know that you are doing it in front of millions of spectators, I think, is grossly unfair.

I would suggest that we if television wants to cover trials, it can have sketches, and could do a sketch of the DA, of the jurors, et cetera, but hopefully not do it of the victim's face.

When I have spoken about cameras, I have been talking about the impact on individual victims. As you know, I am opposed to that. I also think, though, that it has an impact on potential victims. There is going to be a chilling effect on future rape victims coming forward if they know they will be on camera. There is also an impact on the public in general because a broadcast makes them voyeurs into the traumas of the rape victim.

I saw a man in a bar interviewed recently on national television news during the time that the New Bedford rape case was being tried. He said that he normally watched the soaps every day, but during the pendency of that, he was getting his thrills from watching that case. And that is only one example.

If what we want to do is inform viewers on the realities and processes of the court system, there are other kinds of trials that people can learn from, and if we want to expose problems with particular judges or jurisdictions, that is one of the concerns which can be addressed by advocacy groups.

In summary, that I do not see any overriding purpose for having cameras in the courtroom in sexual assault cases.

[The prepared statement of Ms. Marks follows:]

PREPARED STATEMENT OF LYNN MARKS

I am Lynn Marks, Executive Director of Women Organized Against Rape (WOAR) in Philadelphia. WOAR is one of the oldest and largest rape crisis centers in the country. Since 1973, WOAR has helped thousands of rape and child sexual abuse victim-survivors and their families during the trauma following sexual assault. We have a 24-hour hotline, and provide crisis counseling in the hospital emergency rooms and in court. We train professionals who work with sexual assault victims and educate the community about rape, child sexual abuse and their prevention.

Today I would like to address three main issues:

(1) The effect of media coverage on rape trials and the issue of rape generally;

(2) The use of rape victims' names in the media; and

(3) Cameras in the courtroom in sexual assault cases.

I. MEDIA COVERAGE OF RAPE ISSUES AND RAPE TRIALS CAN BE BENEFICIAL IF IT IS DONE RESPONSIBLY

A. FOR INDIVIDUAL VICTIM/WITNESSES:

Media coverage of individual trials adds additional pressure to the already traumatic ordeal of a rape prosecution. Knowing that members of the press are listening to their personal nightmares and will soon make their story even more public increases an already stressful situation. Knowing that reporters will write about the incident, and perhaps editorialize about it, can feel like "another rape".

But fear of publicity should not be seen as the only reason that women are reluctant to report rapes or why rape is so under-reported. Below are some other reasons:

1. Some women don't report rape because they may be afraid of retaliation by the assailant, his friends or family;
2. Some women don't report rape because they may feel embarrassed to have to say in front of total strangers that they may have put themselves in a vulnerable position (often with someone they trusted) and were then violated by this person;
3. Some women don't report because they don't want to be called stupid (because they were walking alone late at night); provocative (because they were wearing a certain style of clothing); naive (for believing that the guy who stopped

to help fix the flat tire would, in fact, do just that); or

4. Some women women don't report because they just want to forget the nightmare.

Yes, the possibility of media coverage of rape trials is certainly a factor in a person's unwillingness to report rape, but is certainly not the only one.

B. FOR SOCIETY AT LARGE:

Publicity on rape and rape prosecution can be beneficial because it exposes the issue as a societal problem and not as an isolated incident between individuals. Even though publicity about individual cases can be difficult on the victim, media attention on the issue itself raises it into the national consciousness which, I believe in the long run, changes attitudes.

For years, rape and the sexual abuse of children were not talked about publicly nor did they receive media attention. Thus, victims felt even more isolated because they believed no one else shared similar traumas. Women's groups raised these issues and sympathetic reporters sometimes covered the topic. But not until rather recently have editorials and columns on rape appeared by writers who in the past have ignored rape.

However, the beneficial value of media coverage of rape and child sexual abuse depends largely on whether it is responsible. Some suggestions for responsible coverage include:

1. Coverage should not be sensationalized.

   (E.G., Headlines such as "Raped, cut, beaten, she lived to testify" (Philadelphia Daily News, 10/4/82) serve to heighten most women's fear of rape; Coverage should not result in the public getting vicarious thrills from the rape; Sometimes when I am interviewed by the media, the reporter wants only an angry, outraged, emotional response rather than a discussion of the issues.)

2. Coverage should not polarize, such as presenting one-sided articles. Because rape prosecutions are by nature adversarial, media coverage should not take the side of the victim or the defendant.

   (E.G., See some coverage of the New Bedford rape and of a rape at a fraternity house at the University of Pennsylvania.)

3. Articles on rape should not be placed next to photographs of sexy looking women and "macho" men or next to advertisements for pornographic movies.

   (E.G., A news story of an extremely brutal rape in Philadelphia's Suburban Station appeared next to a photograph of an outdoor swimsuit beauty contest which took place near the station.)

4. Rape should be taken seriously. Articles or editorial cartoons which make a mockery of a rape victim's plight or imply that a woman "asked for it" are personally hurtful to victims and are damaging to attitudes towards rape in general.

The effect of media coverage also depends on the kinds of rape cases which are the subject of articles, editorials, or features. If only gang rapes or violent rapes between strangers are covered, the public gets a false notion of the realities of rape. Only seldom do we read or hear about rapes between acquaintances, dates or relatives although these comprise the majority of sexual assaults.

The outcomes of publicized trials will probably have an impact on whether women will report rape. For example, if 9 out of 10 rape cases covered in a local paper result in acquittals (even though the overall conviction rate may be significantly higher for rape), women may take this into consideration in deciding whether to report.

Magazine and newspaper features on rape, radio and television talk shows, and made-for-television movies can help focus attention on the reality of what victims must endure. Following these, the number of calls to our hotline increased significantly from people who have had personal experiences. For example, after "Something About Amelia" (a show on incest) aired this past winter, reporting of child sexual abuse increased significantly. We encourage more television dramatizations on sexual assault/abuse, and ask that writers and producers consult with rape crisis counselors and other professionals.

The impact of publicity would also depend on how rape trials are conducted in a particular jurisdiction, and how progressive its laws and procedures are in relation to sex offenses.

Even though rape trials are never easy for a victim, there is a vast difference between prosecuting rape in Pennsylvania and in other jurisdictions. For example, a rape shield law exists in Pennsylvania which bars testimony of a victim's prior sexual history. This law does not exist in some other states.

Another issue to consider is whether publicity of rape gives rise to imitation. Just last week, a 12 year old boy was accused of sexually assaulting a girl in apparent imitation of the widely publicized Big Dan's pool table rape. In 1978, four days after NBC broadcasted a television movie in which a girl was sexually assaulted by a group of reform school classmates with a mop handle, a gang of teenagers similarly assaulted a 9 year old girl on a San Francisco beach. Studies have shown that children can learn aggressive behavior from the media and those who have a history of aggressive behavior may be stimulated to more aggressive behavior by television.

On the other hand, television stories and newspaper articles can also speak to the changing attitudes about rape, show non-aggressive role models between men and women, and cover rape convictions showing how our society, through judges and juries, will not tolerate rape without just punishment!

II. NAMES OF RAPE VICTIMS SHOULD NOT BE PRINTED OR BROADCAST IN THE MEDIA

The printing or broadcasting of rape victims' names in the media further increases the reluctance of these victims to report crimes. Rape is the ultimate violation of privacy; the broadcast of an individual's name to the public would only enhance that invasion while serving no important purpose. The press can adequately cover an incident without using a victim's name or picture.

Perhaps if rape victims were no longer stigmatized by our society and no one believed that women ask to be sexually assaulted any more than they ask to be physically assaulted or burglarized, I might feel differently. But, unfortunately we are not there yet.

I agree with Don Harrison who wrote in the Philadelphia Daily News March 27, 1984:

> ...Unlike other crimes, rape carries a social stigma for the victim. So publicizing the woman's name could

> be a form of double jeopardy, adding public loss of dignity and invasion of privacy to her already terrible trauma.
>
> Victims of other crimes are different. For one thing, only in rare cases do they find themselves under the same kind of courtroom attack that a rape complainant does. This is because, short of denying that the act actually took place, there's only one possible defense-that it wasn't actually rape, that the woman consented to or somehow encouraged the act...Consequently, any defense lawyer worth his fee tries to break down the woman's story, to destroy her credibility, to discredit her...
>
> That's one reason so many women don't report rapes, in effect allowing the rapist to go forth and rape again...[By] not having to experience public shame, she's more likely to report the crime...

I do not agree with the argument that by not releasing victims' names we perpetuate the stigma associated with rape and thus the notion that being raped is something of which to be ashamed. In my role as a rape crisis counselor, it would be ludicrous to tell a woman today not to worry about her name in the papers because someday the public will recognize that rape is a crime of violence, not of sex!

There are other legitimate reasons for not publicizing rape victims' names. For instance, women are often afraid that their employers might find out and might make assumptions about why or how the rape occurred. For some, their jobs might be jeopardized if their employers learn that they have been raped - some examples are a high school teacher, a female security guard, a criminal defense lawyer. And sometimes innocent victims have to move when people learn of the rape.

III. CAMERAS SHOULD NOT BE ALLOWED IN THE COURTROOM DURING SEXUAL ASSAULT CASES

The knowledge that cameras may be present in the courtroom in rape trials would decrease even further a victim's willingness to report crimes. Cameras symbolize a further invasion of privacy into the victim's personal nightmare. Even if the judge bans filming the victim's face, the very presence of a camera is intimidating.

A. IMPACT ON INDIVIDUAL VICTIMS

Rape is the ultimate invasion of privacy. In some ways, cameras seem like another rape, a gang-rape, since the eyes of so many would be participating in the invasion.

It is difficult enough to articulate the facts of a rape in front of a judge, a courtroom audience and the perpetrator himself. To have to testify in front of millions of spectators is grossly unfair. There is no overriding benefit to justify the additional pressure of a television camera.

B. IMPACT ON POTENTIAL VICTIMS

If the public begins to view rape trials on television and knows that individual's lives and traumatic incidents will be exposed into millions of living rooms, they might be even more reluctant to report if a rape happens to them. Thus cameras would create a further chilling effect on rape victims' willingness to come forward.

C. IMPACT ON JURIES

Courtroom cameras would put jurors on the spot and may put undue pressure on them. There is therefore the possibility that they may be no longer impartial.

D. IMPACT ON THE PUBLIC

Broadcasts of rape trials provide another way for people to become voyeurs into the trauma of a rape victim. I saw a man in a bar interviewed recently on national television news during the time the New Bedford rape case was being tried. He said that he used to watch "the soaps" every day on television but that week he was getting his "thrills" daily by watching the rape trial. At whose expense is he getting these "thrills" as he listens to accusations that a real live woman "asked" to have sex on a pool table even though bruises on her thighs might indicate otherwise or as he listens to intricacies about her background, her motives, her personal life?

One argument for broadcasting trials is to inform viewers on the realities and processes of the court system. However, the public can learn about the court system by viewing other kinds of trials which are not as emotionally charged or personally humiliating as rape.

Another reason for courtroom cameras might be to expose problems in the legal system or with a particular judge in that jurisdiction. However, as stated above, this can be done in non-rape cases. Furthermore, one purpose of rape crisis center advocates or other citizen groups is to monitor the criminal justice system. They can adequately advocate for improvements without the broadcasting of rape trials.

Senator SPECTER. Thank you very much, Ms. Marks. Very informative testimony.

I would like to turn now to Ms. Jo Beaudry, coordinator, Victim/ Witness Services, District Attorney's Office, Milwaukee County.

STATEMENT OF JO BEAUDRY

Ms. BEAUDRY. Thank you, Senator.

I will very briefly summarize my testimony. I want to mainly bring to the subcommittee's attention that in my experience the negative impact of publicity on all victims is a big potential, and I think that sexual assault victims are among the most vulnerable to the fear of publicity, and the actual publicity surrounding their trial.

But I would like the subcommittee to consider other vulnerable groups of victims, victims who are elderly, and victims whose lives may be endangered because of their willingness to cooperate in a prosecution, and children who are victims and witnesses, and their families.

My concerns are threefold, of the negative impact on victims.

First of all, the often devastating human impact on that victim themselves, where they are essentially being revictimized by the publicity they receive.

Second, the impact on their willingness to cooperate, which is essential to a district attorney, if they are going to be able to prosecute.

Third, my fears of the chilling effect of publicity on other victims, even if it is one victim, who is afraid to report a crime because they think that they will get the publicity that will either endanger their lives, or embarrass them, I think that one is too many, and we have to take that into account in the balancing act that you are talking about.

Senator SPECTER. Ms. Beaudry, do you think that it was beneficial, or detrimental, to have the New Bedford rape trial publicized as it was?

Ms. BEAUDRY. I thought it was horrendously detrimental.

Senator SPECTER. Do you think there is a chilling effect on discouraging women to come forward and report rapes?

Ms. BEAUDRY. Absolutely, and I believe it has a chilling effect by people who think they can exploit it, who can make spectacle out of it.

Senator SPECTER. In cases aside from rape cases?

Ms. BEAUDRY. Absolutely. We are dealing in the Midwest with a growing problem of youth gangs where victims fear retaliation, where victims see publicity as life threatening.

Senator SPECTER. Are trials televised in Wisconsin?

Ms. BEAUDRY. Yes, they are, and we have had incredible problems with that kind of photographic publicity.

Can I briefly tell you my worst one?

Senator SPECTER. Sure.

Ms. BEAUDRY. We had a victim who was a witness to two police officers being killed, and the witness had been threatened. I called up the TV stations and I said, listen, would you please not photograph her, and they all agreed. They said, OK, Jo, as a favor, we will not. They called me back, and said, guess what, she was threatened as she left the courtroom, and now she is really news, and there was her photograph and her name.

Senator SPECTER. And what happened as a result of that publicity?

Ms. BEAUDRY. We referred her to our witness protection service. Milwaukee is fortunate in having a witness protection in our sheriff's department. Not many jurisdictions have that luxury.

[The prepared statement of Ms. Beaudry follows:]

PREPARED STATEMENT OF JO BEAUDRY

Godd morning, Mr. Chairman and members of the subcommittee. My name is Jo Beaudry. I am the director of the Victim/Witness Services Unit of the Milwaukee County District Attorney's Office and have served in that capacity since the unit's creation in 1975. Thank you for allowing me to appear before you. I am very pleased to be able to discuss with you today some of the conclusions my colleagues and I have drawn about the negative impact of publicity on crime victims and witnesses based on our experience providing services to victims and witnesses who have been involved in the prosecution of criminal cases.

Regrettably, I cannot buttress my arguments with scientific data. When Wisconsin, in 1979, conducted an "experiment" allowing TV cameras into courtrooms, we learned all too sadly that no research has been conducted on the long term effects of photographic, or other types of publicity on participants in courtroom events, especially on crime victims and witnesses.

I have three major concerns to bring before you today. First, the devastating human impact of unwanted publicity on the individual victim and witness. Second, the impact of publicity on the victim/witness' willingness to cooperate with a police investigation and/or a criminal prosecution and, therefore, the impact on a District Attorney's ability to prosecute criminals. Third, the chilling effect such publicity may have on other victims' and witnesses' willingness to report a crime or to continue to cooperate with a criminal prosecution. I believe these three issues surrounding publicity thrust on crime victims and witnesses should be examined separately, but the weight of their impact deserves to be considered collectively.

First, the human impact on each individual victim or witness who is thrust into the public eye merely because they have been the innocent victim of or witness to a criminal's act. Victims and witnesses whose names, addresses, and/or photographs appear in the news media often experience the panic-like fear of revictimization because their vulnerability is publically and broadly exposed, along with the intense fear of retaliation by the offender or the offender's friends and family. Equally common reactions are shame and embarrassment, and enormous guilt over subjecting their families to fear or danger or embarrassment. The publicity surrounding their involvement in a crime becomes, essentially, a revictimization.

Especially vulnerable to the trauma of fearsome and unwanted publicity are sexual assault victims, the elderly, child victims and witnesses and their families, and those who fear retaliation because of their willingness to cooperate with an investigation and criminal prosecution. Simply put by many victims and witnesses who become unwilling public figures, "It's not fair."

Consider, please, the impact of publicity on the life of a young mother who was sexually assaulted. After she testified in court against her assailant, she learned that her children, who had not known of the assault, saw her testifying about it on television.

Consider the fear of an elderly Burglary victim that her son would put her in a nursing home if he found out about the Burglary, taking her victimization as proof that she could no longer care for herself; the fear that he would learn about the crime in the news media was rekindled at every step through the criminal justice process: when the charges were issued; when the Preliminary Hearing was heard in court; when the case went to trial; when the defendant was sentenced.

Consider also the feelings of the six year old boy who testified against the minister who had beaten him. His name, and photographs of him sobbing uncontrollably on the witness stand appeared in both Milwaukee daily newspapers and on all three television stations, even though the case was prosecuted in Madison.

Consider, too, the feelings of the mother of a 14 year old homicide victim, reading and hearing accounts of her daughter's brutal murder day after day; long and detailed accounts of the child's life and last hours, repeated references to the fact that her mother was not at home when the child died after attending a party, with implications that the mother could have prevented the homicide had she been home. The mother strongly suspected that the lengthy and detailed news treatment of the victim and herself was a result of the fact that the person accused of the murder was a juvenile, and the local news media have generally agreed to protect the identity of juveniles who are accused of committing crimes. No such sensitivity and care for juvenile victims and their families.

I am pleased to be able to tell you that the Wisconsin Legislature recently passed a law to define special rights for child victims and witnesses; that law was signed by Governor Anthony Earl during Victim Rights Week and becomes effective today. The Legislative Intent section of the new child victim/witness statute reads as follows:

> The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.

My second major concern here is the impact of publicity, or the fear of publicity, on the willingness of a victim or witness to cooperate with the criminal justice process.

Our victim/witness services program has four major goals: (1) To assist crime victims and witnesses with problems they may have as a result of the crime itself, or as a result of their involvement in the criminal justice process; (2) To assist in the prosecution of criminal cases by ensuring continued victim/witness cooperation and appearance, when necessary, in court; (3) To preserve citizen respect for law enforcement by ensuring that citizens who do cooperate with the criminal justice system are well-treated and feel that "the System" works for them. To make sure, in other words, that they will call the police and cooperate with the District Attorney again if they or their families are a crime victim or witness in the future. (4) To educate the community about the necessity for citizen involvement in law enforcement efforts, and about the services available to help them within our criminal justice system.

The publicity that crime victims and witnesses receive thwarts us in efforts to achieve each of these goals. We cannot promise a right to privacy for victims and witnesses. We cannot protect them from the revictimization of unwanted and intrusive publicity that may, quite literally, endanger their lives as we try and convince them to cooperate in the prosecution of their case. We cannot control, or even know fully, the impact on community attitudes toward involvement in the criminal justice system when crime victims and their most intimate, embarrassing and fearful experiences are used to liven up the daily news.

I would like to tell you a little about the anguish of victim/witness service providers like myself and prosecutors who watch helplessly as solid criminal cases weaken or move toward dismissal because the impact of publicity or the fear of publicity erodes essential witness cooperation.

The juvenile division of the Milwaukee County District Attorney's Office wanted recently to waive to adult court the prosecution of an extremely dangerous 17 year old offender. The juvenile had demanded money in return for a homosexual act from an upper middle class government employe. When refused, the juvenile produced a switchblade, slashed his victim from his neck to his groin and, leaving him for dead, ran over him with the victim's own car. When told of the office's plan to ask for a hearing to waive the juvenile and try him in adult court, the victim asked, "Can you guarantee that there will be no publicity that will identify me?" No, we cannot guarantee such protection for our victims. He refused to cooperate. The juvenile, diagnosed as dangerous and in need of long-term treatment not available within the juvenile system for him, will have to be released when he turns eighteen.

A young man who was the victim of an Armed Robbery was threatened in an attempt to deter him from cooperating with the police; he learned that other witnesses had also been threatened. He then saw his own name and address in the newspaper. This young man moved out of Wisconsin because of fear for his life, and then agonized over his ambivalence about ensuring his own safety and peace of mind versus his civic and moral duty to cooperate with the prosecution of those who had terrorized him. He very reluctantly continued to cooperate, but his rage at the news media for their assault on his privacy and his safety, and his rage against a criminal justice system that could not protect him from this invasion has left parmanent emotional scars far worse than the initial terror of the Armed Robbery. And remember, please, that not every victim is young and mobile and able to move after a crime. Others in situations like this simply vanish, and the State must move to dismiss the case.

I have seen the anguish of victims and witnesses who have suffered through unwanted publicity because of their involvement in a criminal prosecution, and have keenly felt that, indeed, "It's not fair." I have also seen prosecutors struggling with the possibility of losing or dismissing serious criminal cases because an essential witness became uncooperative solely because of the publicity they received or because of their fear of publicity. The terrible cost to our citizens and our communities of cases lost as a result of victim/witness publicity cannot be calculated.

Third, I am concerned about the chilling effect on reporting crime. We will, of course, never know how many victims did not report a crime because they saw the publicity thrust on another victim and feared that reporting would subject them to the same public exposure. However, if one sexual assault victim in Milwaukee County does not report the assault because of a fear of publicity, that is too many. If one victim of a youth gang does not report being attacked because he has seen the gang's other victims identified in the news media, and fears for his life and his family's safety, that is too many, and is too damaging to our community's safety for us to tolerate.

We must remember that crime victims and witnesses are very different than other people who receive publicity. They have done nothing wrong. They have not chosen to live in the public eye. They are not promoting a cause or a business venture. They are merely innocent victims or unwitting witnesses to a criminal's act. They did not chose their predicament, and they did not ask to become the essential actors in our nation's criminal justice process which requires their visible and prolonged involvement if it is to work.

I do not believe that protecting the privacy of an individual who happens to be a crime victim or witness interferes with "the Public's right to know." An account of a crime can be adequately and responsibly reported without revealing the identity and/or residence of the victim and witnesses. The current, prevalent invasion of their privacy is voyeurism, not a journalistic response to protecting the public's right to know about crime in a community. It is also inhumane, and seriously interferes with efforts to foster and preserve citizen cooperation with law enforcement and the criminal justice process.

Thank you.

Senator SPECTER. And, Ms. Marks, your judgment as to the publicity in the New Bedford trial, good or bad?

Ms. MARKS. I think it depends a lot on what jurisdiction we are talking about. If I were living in New Bedford, and I watched that, and I thought that is how trials took place, I would think it would have a negative effect on my reporting, and I understand that.

I think if you are in a jurisdiction where I am from, in Philadelphia, where we can tell women that trials are not like that, I do not think that it has had a detrimental effect, at all.

Senator SPECTER. Has it had a beneficial effect?

Ms. MARKS. I think in some ways it has. People are talking about it, there are columns written by people who never thought about writing about rapes before.

Senator SPECTER. It is OK if it is someone else's courtroom?

Ms. MARKS. We were talking about this individual case. I think that is true here. I would certainly not have wanted that——

Senator SPECTER. It is all right if you can visit, but not live there. It is all right if it is not going to happen to the people who contact you, who come to your courtrooms?

Ms. MARKS. I think that was the effect of this one. It does not mean that I want to have that happen again.

Senator SPECTER. Thank you very much. We very much appreciate your testimony.

I would like now to call Mr. Ed Godfrey, president, and Mr. Ernie Schultz, executive vice president, Radio-Television News Directors Association.

We very much appreciate your being here, gentlemen. Your full statement will be made a part of the record, and to the extent that you can summarize it, we would be grateful to you.

STATEMENTS OF A PANEL CONSISTING OF ED GODFREY, PRESIDENT, RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION, WASHINGTON, DC, AND ERNIE SCHULTZ, EXECUTIVE VICE PRESIDENT, RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION, WASHINGTON, DC

Mr. GODFREY. It is rather difficult to summarize it. I would like to read portions of it, if I might.

Senator SPECTER. You proceed as you choose.

Mr. GODFREY. The extensive radio and television coverage of the recently concluded New Bedford, MA, trial has been both praised and condemned. Those who praise it say it gave many their first look at really happens in such a trial. Critics contend the coverage was sensational exploitation of the agony of the complaining witness. Her face never appeared on television, to our knowledge, but her name was spoken and carried on the audio portion of a television signal. The use of her name this way and by a few newspapers was criticized, along with the extent of the coverage of the case generally.

To answer the critics we must balance the benefits of the coverage of such trials against the risks. A number of competing social values come together in a criminal trial. The accused must be protected from prejudicial publicity. But the public, in whose name the prosecution is brought, must be kept informed as fully and completely as possible, if the several proposes of public trial are to be maximized, and the courts are to retain the confidence of the people. The privacy interests of witnesses and jurors are generally considered to be secondary to these sixth and first amendment rights to a fair, public trial.

Sexual assault trials, as presently conducted, result in intense conflict among those competing values. The press has always been aware of those conflicts. As soon as the complaining witness takes the witness stand, her identify becomes public knowledge to those in the courtroom.

Several years ago the Supreme Court ruled that publication of the name of a victim in a rape-murder case after the information had been placed on the public record could not constitutionally support a suit for invasion of privacy.

Nevertheless, it has been press custom to identify the complaining witness only in exceptional cases and for special reasons. The principal reason for withholding the identity of complaining witnesses is to reduce the unreasoned stigma that attaches to all such witnesses, a stigma that makes many witnesses reluctant to come forward and prosecute their assailants.

With respect to the criticism of the coverage of the New Bedford case, we must remember that it was of intense local public interest. It attracted national attention as well because of the lurid nature of the accusations.

If cameras had not been present in the Massachusetts trial, the case would still have received extensive but indirect and less reliable coverage in newspapers, magazines, and newscasts. Technology and the wisdom of the courts in the 30 States which now permit radio and television access to criminal trials allow us to see the participants and hear their actual words. We no longer have to rely on sketches and what the reporters thought they heard.

That is not to say that a rape victim's name should be broadcast, only that it is a risk worth taking, and there are ways that the judge, upon proper findings, can control the audio and video coverage in the courtroom to minimize, if not elininate that risk. Under the first amendment there is no way for anyone to eliminate the risk that someone will go outside the courtroom and report the name of the complaining witness.

The real problem, we submit, is society's perception of the crime of rape. We agree with author Susan Brownmiller, whose book "Against Our Will" is a well researched and eloquent indictment of the way society treats the crime of rape, that it was not a mistake to televise the New Bedford trial. Quite the contrary, Ms. Brownmiller said during the ABC broadcast of "This Week With David Brinkley" on March 25:

> * * * historically the time was right in America to take one case and to examine it thoroughly, and the Big Dan's gang rape on the pool table case became a morality play, a public morality play for the Nation, much the way the televised Watergate hearings also instructed a Nation in a process of government and in corruption in government. I think this case served to enlighten a Nation as to what actually happens in a rape and what actually happens in a courtroom.

Ms. Brownmiller does not think the issue of whether or not the complaining witness is identified is at all important. She told us, "It's so easy to attack the media. It's just a red herring. The real issue is better police protection for rape victims."

We hope the day will come and come soon when society treats them just like the other victims of crimes, and the news media can do the same without setting off a fire storm of criticism. We believe that if there is a fault, it lies within the courts and the society they reflect, not in the media which merely exposes what already exists.

If there is fault, change the system. Do not hide it.

Thank you, Senator.

Senator SPECTER. You say you suggest the system be changed, do not what?

Mr. GODFREY. Do not hide it.

Senator SPECTER. Mr. Schultz, would you care to supplement what Mr. Godfrey said?

Mr. SCHULTZ. The statement pretty well speaks for itself. We would be glad to answer any questions.

I wish Ms. Brownmiller were here. She is not alone in taking the position that the coverage was beneficial.

Senator SPECTER. The testimony said it was time to examine one case, as the New Bedford case was examined, and the analogy to Watergate is an interesting observation.

Is there some suggestion there that there should not be repetitive coverage upon other similar cases?

Mr. GODFREY. None, whatsoever. No, not on our part. I cannot speak for Ms. Brownmiller.

Senator SPECTER. Mr. Godfrey, what do you think about the tesimony of Mr. Pina, the district attorney, who would change the presumption on access by television cameras, that in the case of rape, or child molestation, for example, that the presumption ought to be against television coverage?

Mr. GODFREY. I disagree with him, Senator. I think, as cameras have come into the courtroom, that the judiciary has been moving cautiously, and has been able to control pretty well what they want to happen in the courtroom with those cameras.

Senator SPECTER. Do you think that the judiciary has been unduly restrictive of access by television cameras, up to the present time?

Mr. GODFREY. I would not put it that strongly. Let us say they have been slow to move.

Senator SPECTER. Are you satisfied with the pace?

Mr. GODFREY. I beg your pardon?

Senator SPECTER. Are you satisfied with the pace the judiciary has moved in opening up the courtroom to television cameras?

Mr. GODFREY. No, sir.

Senator SPECTER. What would you like to see done?

Mr. GODFREY. I would like to see them opened up a little faster.

Senator SPECTER. You would like to see all the courtrooms opened up, in all the jurisdictions?

Mr. GODFREY. Under the groundrules laid by the *Chandler* case, I think that it works very well.

Senator SPECTER. Do you think it is necessary to shield the victim, to any extent?

Mr. GODFREY. Yes, sir.

Senator SPECTER. To what extent?

Mr. **Godfrey**. Absolutely. I do not think that woman's name should ever have been used.

Senator **Specter**. How about pictures of her?

Mr. **Godfrey**. No pictures. I do not think it is necessary.

Senator **Specter**. What does television do with the time that she appears on the witness stand? What appears on the screen?

Mr. **Godfrey**. We have things that we can put in there, technological devices, graphics whatever.

Mr. **Schultz**. You could point the camera at the defense attorney, the prosecutor, the judge, the jury, the defendant, there are a lot of things in a courtroom to see, other than the complaining witness.

Senator **Specter**. Mr. Godfrey, in your testimony, you have accurately characterized the balancing on constitutional grounds between the defendant's right to a fair trial, and the media's access under the first amendment, the freedom of the press.

Do you think that there is no aspect of the rights of the victims to consideration of the balancing as to what access there ought to be by television in the courtroom?

Mr. **Godfrey**. I think we have to keep the rights of the victim in mind. We cannot forget those rights.

Senator **Specter**. Do you think that a victim has any constitutional rights in this area? This may be a question outside of your purview, as a nonlawyer, but I would be interested in your view on it.

When we define constitutional rights, we have some which are explicit, and some with are inferential, and there are certain vagaries which necessarily attach to interpretations, and what we are really saying, what is the level of importance of a value, and I would be interested in your own evaluation as to what is the level of importance of a rape victims' rights, to the extent that you think she has some, in trying to strike the balance here?

Mr. **Godfrey**. I do not know whether I am answering this correctly or not, but I think rape victim's rights have been forgotten, which is one of the reasons I feel so strongly about somehow televising these trials.

Unfortunately, it is the most sensational cases which are publicized, but it seems to me the Constitutional rights of a victim have been overshadowed by trying to protect those accused, in our judicial system.

I think that is what transpires in the courts, and the more we are in the courts with our cameras, the more we can show what is happening, and perhaps change it.

Senator **Specter**. Do you disagree with the testimony which a number of the women have brought forward here today, that the televising of a case like the New Bedford rape case has a significant chilling effect on other women coming forward to testify?

Mr. **Godfrey**. I would have to see evidence of that. Because I happen to have personal friends, at least one I could think of offhand, who was a rape victim, and there was no televised coverage, there was no publicity whatsoever about her. She immediately reported, and went through the whole trial process, the process leading up to the trial, she said she was just made to feel unclean in that entire process. She felt more like the criminal than the victim.

Senator **Specter**. Well, there is a substantial body of evidence that many women who are rape victims did not come forward and testify under any circumstance, in days prior to television coverage.

The statistics would be interesting, and they may not be necessarily conclusive.

You heard from a number of women here today whose testimony constitutes evidence of a sort, they talk about individual cases, they are talking about their own personal feelings, they are talking about their professional judgment in dealing with other women, but their testimony has been strong on the basic point that the kind of television coverage which was present in the New Bedford trial will discourage other rape victims from coming forward.

Whether that disadvantage is outweighed by other advantages, or by constitutional access by the media is another question, but as you narrow the focus to the issue as to, does this kind of television coverage have a chilling effect and discourage women from coming forward to testify, I would be interested in your thoughts on that narrow question.

Mr. **Godfrey**. I can only go on my experience in the business, which is longer than I would like to relate, but when television first gets into anything, there is a sense of newness, a sense of shock, a chilling effect.

As we have gotten into it, and the coverage has been more prevelant, as we get used to it, I think it has the reverse effect as to what those women feel that the televising of the New Bedford trial has.

Senator **Specter**. Encourage women to come forward?

Mr. **Godfrey**. Encourage women to come forward.

Senator **Specter**. How so?

Mr. **Godfrey**. Showing how the process works.

Senator **Specter**. But they are not beneficiaries of that television production. They are on the spot. The net effect may be good, but——

Mr. **Godfrey**. I disagree with you. There is no reason why they should be on the spot. I think that the news media in general, those of us in radio, television, and newspapers, in general, are responsible enough that we do not have to put them on the spot.

Senator **Specter**. But how can you avoid it? Do you avoid it only with procedures that guarantee their anonymity?

Mr. **Godfrey**. That is right.

Senator **Specter**. You heard women testify today as to the difficulty of that.

Mr. **Godfrey**. I think the examples they gave today were irresponsible. I think the examples they gave were examples of irresponsible reporting.

Senator **Specter**. You mean in their cases it was irresponsible and not the women?

Mr. **Godfrey**. Yes, and not typical. I think we have to take that chance.

Senator **Specter**. So what you are really saying is if you had guidelines and protections, self-imposed by the media, that you could protect the anonymity, and protect the identity of the women?

Mr. GODFREY. Yes, sir.

Mr. SCHULTZ. And not just self-imposed by the media. It could be imposed by the court. In most jurisdictions, in most States that permit cameras, cases involving rape victims and juveniles and confidential witnesses are handled differently by order of the court.

All the judge has to do is show cause why he shall deny access to the name of the victim, the face of the victim, or even the testimony of the victim. He just has to show cause.

Senator SPECTER. What was your reaction to the incident cited by District Attorney Pina, about the 12-year-old-boy, who duplicated, or allegedly raped a 10-year-old-girl on the pool table?

Mr. GODFREY. At the risk of your thinking me facetious, I would like to say that we sent a lot of soldiers to Vietnam, who came back and acted out those same actions. That does not mean that we are going to stop sending people to war. We cannot take responsibility for people.

Senator SPECTER. That may mean that we may be able to stop sending people to war, that may be a bad analogy for your case.

Mr. GODFREY. I do not know that it is. There was a television show a few years ago, a movie where a girl was raped by a broomstick in jail, and the same thing occurred out in San Francisco, and they said they got the idea from the movie. The trial did not uphold that.

Senator SPECTER. Was it clear from the course of the trial that the exoneration was on grounds of not being inspired by the event, by the show? There are lots of defenses.

Mr. GODFREY. I really cannot answer that.

Senator SPECTER. There are lots of defenses in a trial, which may not prove a point that there was an inspiration from the show.

Mr. GODFREY. I do not know whether Mr. Pina talked to the mother of the boy or not, as you said, it sounded to me like he had talked to her.

I have the newspaper article here, and it is not clear to me, and it is not very clear in the newspaper article I read, exactly how much of that show the boy watched.

Senator SPECTER. How about the issue of access by children in midafternoon, to sexually explicit testimony? Do you think there is a problem there?

Mr. GODFREY. Have you watched our soap operas on all three networks, from noon until 4 o'clock in the afternoon?

Senator SPECTER. No.

Mr. GODFREY. I do not think this is much more sexually explicit than there, they just did not use the language that was used in the trial.

Senator SPECTER. That is a significant difference.

Mr. GODFREY. It happened. It is reality.

Senator SPECTER. It happened, and it is reality, but you see no problem about having it carried on a television program in midafternoon, where children have access to it?

Mr. GODFREY. No, I do not. I think that can be controlled in the home. I never had any problem as a parent. There is not much I would not let my children watch either, and they did not seem to have been affected by it.

Senator **Specter**. Did you have young children watching the New Bedford rape trial?

Mr. **Godfrey**. No, sir.

Senator **Specter**. We appreciate your being here. It raises the whole matter, the whole matter raises very, very important issues, and my own sense is that the hearing has been an excellent one in describing them, and penetrating them, and that provides some matters which we will pursue further, and we appreciate your being here with us, Mr. Godfrey and Mr. Schultz.

Mr. **Godfrey**. We appreciate your invitation to have us.

Senator **Specter**. We know the importance of your work, and we respect it, and we respect the views you have brought forward here.

We will admit for the record also the District of Columbia Rape Crisis Center statement, and with that inclusion, we will conclude the hearing.

Thank you very much.

[The following was received for the record:]

Statement
Prepared by
Cecily M. Robbins
Executive Director
Rape Crisis Center
Washington, D.C.

April 1984

A statistical overview detailing the numbers of rapes, reports, indictments, and successful convictions is essential to understanding the dynamic role that publicity can and does have on sexual assault victims. From the moment a person is sexually assaulted publicity is a consideration: whether it is an impediment to making an official police report, getting counseling, or facing up to the challenge of cross-examination in a court room. Our criminal justice system, specifically the laws governing the prosecution of sexual assault cases, are structured such that defense attorneys frequently attack the veracity and character of the victim/witness. Privacy is generally valued by most of us so it is not difficult to understand why a rape victim would not want every nick and scar in his or her character held up to public judgment.

According to data taken from U.S. Department of Justice, Federal Bureau of Investigations records, in 1977 there were 63,020 reported rapes in the United States. Only 50 percent, or 31,510 resulted in arrests. Of the 31,510 arrests, only 65 percent, or 20,482, went to court. Of the 20,482 that went to court, 53 percent, or 10,855, were acquitted, dismissed, or plea bargained to a lesser offense. That means that 9,627, or 16 percent, of the original 63,020 resulted in convictions. One final twist in reviewing sexual assault data is important. The reporting rate for rape is notoriously low, only one out of ten. Going back to the original 63,020 reported cases in 1977 and applying the one-out-of-ten rule brings the number of rapes for that year up to 630,200. The rate of conviction would then drop to two percent.

The point of this exercise is to set the scene for a critical question: why do so few people report sexual assault? One of the primary reasons is fear of notoriety, embarrassment, and publicity. In this sense, publicity means not just radio, television, cable news, and print media. It also means, what your neighbors, coworkers, and relatives know about you. It means that after one has lost control of one's life and body in the most intimate sense, you now are faced with people regarding you in ways and about matters that have little or nothing to do with your life as you wish to live it. Control at this point is a paramount issue for a sexual assault victim. If we loose the precious few gains that we have made by way of encouraging victims to come forward, we may find that even fewer people will be willing to report.

There is one final aspect of the question of publicity and its impact on reporting that has received little attention. We are just beginning to focus on the rapist and other paraphiliacs to determine the cause of sexual assault. In one study conducted by Dr. Nicholas Groth in Somner, Connecticut, it was revealed that 80 percent of the study population of convicted offenders had been assaulted as children. At a recent conference on Juvenile Sex Offenders sponsored by Montgomery County, Maryland, it was suggested that the low reporting rate for boys and juvenile males may be due in part because these young people fear having their gender identification in question. Certainly for an adolescent, the fear of publicity of any sort about sexuality would decrease the probability of reporting and obtaining adequate treatment.

As long as sexual assault goes unreported, it goes unchecked. The message to the offender is that there is little or no penalty for anti-social behavior. As long as the victim/witness are discouraged from reporting by fear of publicity, the alternative is to suffer in silence.

Statement
Prepared by
Helene
Rape Crisis Center
Washington, D.C.

April 1984

To a woman who has recently been sexually assaulted, the thought of having the details of her trial published only exacerbates the emotions of the rape itself. Rape victims typically react to assaults in a predictable manner that has come to be known as the Rape Trauma Syndrome, characterized by fear, lack of control, shame, guilt, and self-blame.

Because defense attorneys commonly denigrate the character of the victim, every aspect of the victim's life is open to public scrutiny if a trial is publicized. She will be asked "why were you there," "what were you wearing," "why didn't you scream or fight harder?" These questions bring up for a victim all the issues she has worked so hard to assimilate. Beyond that it brings to the attention of her loved ones, family members, and people with who she has a professional relationship the same questions about her character and the reason for the assault.

Most importantly, the issue of lack of control of one's life is the primary concern of a woman who would consider going through the trial process after an assault. Being rendered totally helpless over one's inner being and even one's life is a harrowing experience which lasts and must be coped with long after the rape itself. One of the basic effective treatment procedures for rape victims, whether at a hospital, in a D.A.'s office, or in therapy is to allow the woman as many chances to take control of her life as possible. To decide to report, be examined, and go through the endless indignities and frustration of a court trial is a most difficult decision in itself -- but if the spectre of publicity -- of the loss of being able to control what one says and does about one's life and reputation -- is also added, it is a great wonder that even one out of ten rape victims report the crime.

Senator SPECTER. Mr. Godfrey and Mr. Schultz, there may be some additional questions submitted to you by Senator Thurmond, the chairman of the committee, which he may want some responses to in writing.

Thank you.

[Whereupon, at 12:15 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Responses by Mr. Godfrey end Mr. Schultz to written questions from Senator Thurmond follow:]

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May 11, 1984

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Thurmond,

Thank you for giving us the opportunity to reply to your questions concerning our testimony before your committee April 24. We will first list the question, then our answer.

> 1. The Bar Association of Greater Cleveland conducted a study in early 1980 that surveyed the attitudes of judges, jurors, attorneys, and witnesses involved in either a major trial that received gavel-to-gavel television coverage or two other proceedings in which television appeared only episodically. The data indicates that 50% of the jurors, 30% of the witnesses and 54% of the lawyers were distracted. With this in mind, how would you justify the disruptive effect of cameras in the courtroom?

Four-fifths of the states now permit some form of electronic and photographic coverage of their courts; three-fifths of the states permit such coverage of criminal trials.1/ The highest courts of these states have concluded that, properly prescribed and supervised, the presence of small, silent cameras in the courtroom, without any special lighting, is neither disruptive nor otherwise distracting. Indeed, this kind of media coverage often results in a less congested courtroom when both print and electronic journalists choose to review the proceedings in the media's audio-video monitoring room, which is set up away from the courtroom.

1/ Radio-Television News Directors Association, "News Media Coverage of Judicial Proceedings with Cameras and Microphones: A Survey of the States", revised April 30, 1984, p. B-1, B-4, B-5 (looseleaf)

1984 International Conference, December 5-7, San Antonio

There have been no reliable studies that have shown cameras to have had a disruptive effect in the courtroom. Growing experience and the two largest studies on the subject (which themselves were limited by a built-in bias from focusing on television coverage rather than comparing all of the many potential distractions in a trial) have shown the contrary.

In California, where the most comprehensive study was undertaken by the Judicial Council and the Administrative Office of the Courts, the researchers concluded that "[t]he presence of EMC [extended media coverage] equipment and operators generally was not distracting to proceeding participants. Only 10% of participants interviewed said that EMC was either somewhat, definitely or extremely distracting."2/ The evaluators said that from their own in-court observation, they were "able to see for themselves if witnesses were nervous, if prosecutors played up to the camera, if jurors were distracted and if judges were unable to keep order. In general, none of the postulated disturbance-distraction-decorum effects occurred."3/ In Florida, a survey of 1,349 trial participants by the administrative office of the state courts revealed their perception that the presence of electronic media disrupted the trial either not at all or only slightly. The jurors did not think their ability to concentrate on the testimony was affected, and both jurors and witnesses said they felt slightly more responsible for their actions.4/

The Cleveland bar study, which is the premise of your question, was implicitly rejected by the Ohio Supreme Court when, despite the recommendation of that bar group to ban such coverage, the Court adopted rules to permit electronic and photographic coverage of the courts of that state.5/ Not only was the Cleveland bar sample

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2/ Ernest H. Short and Associates, Inc., "Evaluation of California's Experiment with Extended Media Coverage of Courts," Sept. 1981, p. 222

3/ Id. at 234

4/ In re Petition of Post-Newsweek Stations, 370 So. 2d 764, 768 (Fla. 1979)

5/ News Release of The Bar Association of Greater Cleveland, March 28, 1980: "Greater Cleveland Bar Renews Opposition to Permitting Cameras in the Courtroom;" News Release of the Supreme Court of Ohio, December 4, 1981, and the Court's permanent rules relating to coverage of courtroom proceedings.

extremely small, but the results were grossly distorted in the bar group's report on them. For example, the Cleveland bar's reporting of the figures which you used in your question did not disclose that the bar's unpublished questionnaire tabulations showed that of those persons who said they were distracted, the overwhelming majority reported "Slightly" (rather than "Moderately", "Very", or "Extremely"), and many of the participants said they were "more attentive" because of the camera coverage. An American Bar Foundation staff analysis of the Cleveland bar study stated: "Clearly this was not an extensive nor carefully controlled study. *** Even if the analysis were more complete and systematic, the study's small size and low response rate would make the generality of its findings dubious."6/

Moreover, there has been no study to test the perceptions of these kinds against the strong possibility that many other facets of the trial situation (e.g., presence of the public court reporter, news reporters and sketch artists, discussions at the counsel table, mannerisms of the judge) contributed to a participant's nervousness and distraction which that participant may be willing to attribute to the presence of a camera when that is suggested.

Individual judges, lawyers, jurors and witnesses have reported that the camera is usually quickly forgotten once the participants are caught up in the developments of the trial. As the Florida study indicated, some awareness of television's presence is probably useful to the court's search for the truth. A controlled experiment at the University of Wisconsin demonstrated that witnesses who knew they were being televised recalled more accurately and with greater specificity the details of an event about which they were being examined.7

2. Open criminal trials have been a tradition of our system of justice since before this country was settled. The Supreme Court has upheld that premise on numerous occasions. The question it seems we must deal with is how to minimize any negative impact of publicity? Based on your experience, what steps do you see as necessary to protect the rights of other parties in the trial?

The courts have all the powers they need to protect the rights of

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6/ American Bar Foundation, "Cameras in the Courtroom," Sept. 1981 (staff study), Annot. Biblio., para 12.

7/ Hoyt, "Courtroom Coverage: The Effects of Being Televised," 21 J. Broadcasting, 487 (1977) all parties in the trial. This can be done without restricting the ability of the news media to use their best tools to give the public information about the trial.8/

Your question recognizes the Supreme Court's support of this nation's long tradition of open criminal trials. More than that, the Court has continued to strengthen the right of the news media, as surrogates for the public not in attendance, to cover and fully report these trials.9/

Radio and television coverage in the courtroom does not appreciably increase the problems of potentially prejudicial publicity. In upholding a televised trial conviction in *Chandler v. Florida*, the Supreme Court accepted the argument that broadcast coverage should be treated essentially the same as other forms of media coverage of trials so far as due process determinations are concerned.

> "* * * The risk of juror prejudice in some cases does not justify an absolute ban on news coverage of trials by the printed media; so also the risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage. A case attracts a high level of public interest because of its intrinsic interest to the public and the manner of reporting the event. The risk of juror prejudice is present in any publication of a trial, but the appropriate safeguard against such prejudice is the defendant's right to demonstrate that the media's coverage of his case -- be it printed or broadcast -- compromised the ability of the particular jury that heard the case to adjudicate fairly. ***"10/

8/ See the judicial remedies short of controls on publication discussed in Sheppard v. Maxwell, 384 U.S. 333 (1966).

9/ *E.g.*, Press Enterprise Co. v. Superior Court, 104 S. Ct. 819 (1984); Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982); Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)

10/Chandler v. Florida, 449 U.S. 560, 574-75 (1981)

In our testimony to the subcommittee, we have already recognized the appropriateness of special efforts by the trial judge and cooperation by the media to avoid disclosing the identities of complaining witnesses such as rape victims and police informants. RTNDA recommends the Florida rule that requires state trial judges to permit electronic and photographic coverage unless the impact of it on a party or witness would be "qualitatively different" than the impact on other members of the public, considering also whether that impact is qualitatively different than that otherwise existing from other media coverage and the public nature of the trial generally.[11] We believe that, under this standard, the rights and interests of all trial participants and the public can be accommodated.

3. Thanks primarily to the lurid nature of the crime and the notorious circumstances surrounding the incident at Big Dan's, these courtroom proceedings received gavel-to-gavel coverage. In actuality most court proceedings seldom receive more than a few minutes of media 'airtime'. In the interests of fairness, do you think it is necessary to broadcast the entire trial or can the broadcaster present a fair or impartial sixty-second capsule version? If the shorter version is preferred how does one keep the media from editorializing or unconsciously biasing its coverage? And who is best suited to do the editing?

It is not necessary to broadcast the entire trial. Newspapers do not print the entire transcript. The length of the electronic coverage each day will depend upon an assessment of the news value of what happened in the courtroom that day. That assessment is made by the radio and television reporters and editors, just as newspaper reporters and editors decide the length of their coverage. Those decisions have always been made and should always be made by journalists, not by judges or legislators. Length has nothing to do with bias or fairness. A good report is a good report, whether it runs sixty seconds or six hours. And exactly the same thing can be said about a biased report. The only essential difference in radio and television coverage of trials with cameras and microphones in the courtroom and coverage without them is the raw material that is to be edited: pictures of the actual participants and the sound of their own words, as compared with sketches and what the reporters thought they heard. That is the only difference and we submit it is a major one.

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[11] In re Petition of Post-Newsweek Stations, 370 So. 2d 764 (Fla. 1979).

The Honorable Strom Thurmond
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Trials will be covered by the electronic media with or without cameras and microphones inside the courtroom. The length of such coverage will be determined by the news value of what happened that day. The only difference is how the report is presented. Once guidelines have been agreed upon concerning the placement of the equipment and its operation, the courts cannot and should not try to apply any controls over electronic news coverage that do not also apply to print coverage.

As Chief Justice Warren Burger has written, "For better or worse, editing is what editors are for; and editing is selection and choice of material."12/ The only question is what will be available for the electronic media to edit? Sketches and what reporters thought they heard, or pictures of the actual courtroom and the actual words of the participants?

Sincerely yours,

Ed Godfrey
President, RTNDA
News Director
WAVE-TV Louisville

Ernie Schultz
Executive Vice President
Washington, DC

cc: The Honorable Arlen Specter

12/ Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94, 124 (1973)

APPENDIX

TESTIMONY SUBMITTED ON BEHALF OF COLONY COMMUNICATIONS, OWNER OF GREATER FALL RIVER CABLE TV AND WHALING CITY CABLE TV

This testimony is submitted on behalf of Colony Communications, Inc., owner of Greater Fall River Cable TV and Whaling City Cable TV, the two local cable companies who provided live coverage of the court proceedings within the communities of Fall River, New Bedford and Dartmouth, Massachusetts.

While we were not invited to testify at the hearings in Washington, our perspective sheds some light on the relationship between a medium and the people who watch, listen or read it. A historical recounting of our actions is necessary.

We first became interested in covering the trial after Judge Young had said that cameras would be allowed into the courtroom and that the output from those cameras could be used as the participating media saw fit. Although our cable systems were not asked to be a part of the "pool" covering the trial, we felt we had a legitimate right to use the footage from the camera, and considered live coverage. Our cable systems have more than 35 channels available, and we had the channel space to dedicate one channel to this purpose. Therefore, the technical considerations had been largely dealt with before the trial began.

A tougher decision was the one determining whether we would cover the trial in its entirety. These systems are interconnected by microwave, so we had the fortuitous circumstance of serving both the community where the alleged crime took place, and the community where it was to be adjudicated. For years, these systems have covered significant news of their communities in award-winning fashion. They were one of the first cable systems in the nation to program a nightly, half-hour news program devoted only to local news. We feel residents of the communities we serve know that if there is a significant news event happening in Fall River or New Bedford or Dartmouth, that we will cover it.

It is not only a benefit, but almost a mandate of cable television that community events be covered in the most thorough manner possible. Certainly, there had been no event in these communities more significant than the Big Dan's case since we began our news program in 1981. In addition, many in the community felt that they were being unjustly harmed by outsiders who placed a stigma on New Bedford and Fall River as a "gang rape" capital. In fact, this stigma extended to the many immigrants and Portuguese-Americans who constitute a very stable portion of the area's population. They were forced to listen to the indignities heaped upon their community and their heritage by people who knew nothing of the community. Further, were these people forced to pick up bits and pieces of the trial from newspaper accounts and "highlights" from the evening news, we felt they would never have the opportunity to hear what actually happened to cause them so much grief. A far better alternative, we felt, was to let the community see the trial itself and make its own decision. Our news program followed its normal policy and did not reveal the name of the victim.

Once we decided we could, and should, cover the trial entirely, we sent another letter to Judge Young explaining our plans, so as not to alarm the court once the coverage began. We were aware that the victim's name or picture could have been mentioned in the course of the trial, but once the judge gave his blessing to the coverage, we assumed that was the responsibility of the court. The judge responded promptly and affirmatively to our plans.

The victim's name was mentioned shortly after the trial began, and the race to publish it was on. What made the Big Dan's case "News" was not the action that precipitated the lawsuit, but the decision of the media to cover the trial. I personally spoke with more than 70 news organizations from all over the country, and did not receive one satisfactory answer to the question "Why are you interested?" The answers revolved around the fact that other news organizations were covering it, rather than on the merits of the case itself. For me, it was a sobering lesson on what makes news in this country.

The hearings and all of the followup coverage of the trial did not make the distinction between our companies and the Cable News Network, a national service based in Atlanta. While both Greater Fall River Cable and Whaling City Cable are affiliates of CNN, the rationales for carrying the trial vary markedly. The two local cable companies cablecast the trial to 44,000 homes who have paid for their subscriptions in the area where the crime and the trial occurred. Referring to cable coverage in general lumped us together with a national service. We felt that this blurred distinction did a disservice to our coverage; we did not pick and choose what to cover, as did CNN and other media. Our intention was to present the trial as though a viewer was in the audience, day in and day out; our subscribers feel as though we have done so. For example, New Bedford and Fall River residents were the only persons to see the first verdicts live on television because our video feed was always active and never selectively chosen.

Finally, we submit the results of a survey of more than 600 subscribers in the area, which indicate that the coverage of the trials was proper, that the coverage influenced neither their decision about the relative guilt or innocence of the accused or the judicial system in general, and that they were in favor of seeing more trials covered by cable systems. Judge Young has called our system manager praising the job we did. We are considering coverage of trials in the future, but will probably shy away from a proceeding like the Big Dan's case, due to the sensitive problems of having to televise a rape victim's name and address.